

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
NEW LANDING UTILITY, INC., )  
 ) No. 04-0610  
Proposed general increase in )  
water and sewer rates )

Chicago, Illinois  
April 4, 2005

Met pursuant to notice at 9:30 a.m.

BEFORE :

MR. IAN D. BRODSKY, Administrative Law Judge.

APPEARANCES:

LAW OFFICE OF AMY MURAN FELTON, by  
MS. AMY MURAN FELTON  
110 South Euclid Avenue  
Oak Park, Illinois 60302  
Appearing for New Landing Utility, Inc.:

MS. CARLA SCARSELLA and  
MS. JANIS VONQUALEN (telephonically)  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff;

1 APPEARANCES: (CONT'D)

2 MS. SUSAN L. SATTER and  
3 MR. RISHI GARG  
4 100 West Randolph, Suite 111  
5 Chicago, Illinois 60601  
6 Appearing for the People of the State of  
7 Illinois;

8 LAW OFFICE OF LOWE & STEINMETZ, LTD, by  
9 MR. RALPH E. LOWE  
10 407 West Galena Boulevard  
11 P.O. Box 1625  
12 Aurora, Illinois 60507  
13 Appearing for New Landing HOA and  
14 Lost Nation HOA.

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SULLIVAN REPORTING COMPANY, by  
Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
Gene Armstrong					

1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	New Landing		
	No. 1		
4			
	New Landing		
5	No. 2		
6	AG Cross		
	No. 1		
7			
	AG Cross		
8	No. 2		
9	AG Cross		
	No. 3		
10			
	AG Cross		
11	No. 4		
12	AG Cross		
	No. 5		
13			
	AG Cross		
14	No. 6		
15	AG Cross		
	No. 7		
16			
	AG Cross		
17	No. 8		
18			
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1 JUDGE BRODSKY: Pursuant to the authority of  
2 the Illinois Commerce Commission, I now call  
3 Docket 04-0610. This is New Landing Utility, Inc.  
4 It's a proposed general increase in water and sewer  
5 rates.

6 May I have the appearances for the  
7 record, please.

8 MS. MURAN FELTON: Good morning, your Honor,  
9 Amy Muran, M-u-r-a-n, Felton, F-e-l-t-o-n, on behalf  
10 of New Landing Utility, 110 South Euclid, Oak Park,  
11 Illinois 60302.

12 MS. VonQUALEN: Janis VonQualen and Carla  
13 Scarsella on behalf of the Staff of the Illinois  
14 Commerce Commission, 160 North LaSalle Street, Suite  
15 C-800, Chicago, Illinois 60601.

16 MS. SATTER: Susan L. Satter and Rishi Garg  
17 appearing on behalf of the People of the State of  
18 Illinois, 100 West Randolph Street, Chicago, Illinois  
19 60601.

20 MR. LOWE: Ralph Lowe appearing on behalf of  
21 the Lost Nation Property Owner's Association, 407  
22 West Galena Boulevard, Aurora, Illinois 60506.

1           JUDGE BRODSKY:   Okay.   Thank you.   The first  
2   item, we had a filing by Staff that sets forth  
3   certain stipulations.   Did you guy's want to address  
4   that?

5           MS. VonQUALEN:   I'm not sure how we would  
6   address it.   We simply made that filling to alert  
7   you, Judge, to what we had heard from the various  
8   parties regarding their agreement with or  
9   disagreement with the statements that are set forth  
10   in that pleading.   I assume since we filed it that if  
11   we unintentionally misstated anybody's agreement or  
12   disagreement, they would object at some point,  
13   otherwise what I guess we would ask would be that  
14   that would be made -- put into the record and that  
15   would be something that you could reply upon in your  
16   proposed order.

17          JUDGE BRODSKY:   Okay.   Are there any objections  
18   or corrections?

19          MS. MURAN FELTON:   There are three corrections  
20   the Company has, your Honor.   On Friday we sent out a  
21   response to some of the stipulated requests and we  
22   wanted to change three of those answers.   With

1     respect to FD-8 and FD-9, the Company will not  
2     stipulate to those.

3             JUDGE BRODSKY:   Hold on.   What page are you on?

4             MS. VonQUALEN:   Excuse me, I'm referring to the  
5     filing that we made last Wednesday, which was the  
6     proposed stipulation, which is basically a chart --

7             MS. MURAN FELTON:   Right.

8             MS. VonQUALEN:   -- that said --

9             MS. MURAN FELTON:   I was just following with  
10    respect to the other one -- these other stipulations.  
11    The chart's fine, yeah.

12            JUDGE BRODSKY:   The chart's fine.

13            MS. MURAN FELTON:   Pardon me.   Excuse me.

14            JUDGE BRODSKY:   All right.   Any other reaction  
15    to the chart?

16                                (No response.)

17                                For purposes of the record, this  
18    was -- Staff's request for stipulation dated  
19    March 30th and to the extent that all parties either  
20    agree or have no opinion as to one of the requested  
21    stipulations, they will be treated as stipulated to.

22                                Also, on Friday -- not Friday,

1 March 30th, midweek, there were filings requesting  
2 that the Commission petition for receivership. Let  
3 me deal first with the supplement to the filing by  
4 Staff. You indicate that Aqua Illinois was  
5 interested potentially. Were others contacted as  
6 well?

7 MS. VonQUALEN: Yes, Judge.

8 JUDGE BRODSKY: Which others?

9 MS. VonQUALEN: Utilities, Inc. was contacted  
10 as was Illinois American Water Company.

11 JUDGE BRODSKY: Okay. Were there any entities  
12 in Ogle County that were also contacted?

13 MS. VonQUALEN: Those were the only entities  
14 that were contacted. My understanding is that  
15 Utilities, Inc., Illinois American and Aqua Illinois  
16 all have some utilities within the vicinity.

17 JUDGE BRODSKY: Okay. And what was the  
18 procedure by which they were contacted?

19 MS. VonQUALEN: Mr. Palopal (phonetic), the  
20 manager of the water department made telephone calls.

21 JUDGE BRODSKY: All right. At some point he  
22 may need to enter an affidavit to that effect.



1                   All right. Now, my understanding from  
2   the -- Exhibit A to the People's petition is the Ogle  
3   County Court at this point did not appoint a  
4   receiver, did not -- well, appears to have sort of  
5   denied the petition without prejudice, would that be  
6   an appropriate characterization?

7           MS. SATTER: Yes, it did -- I think that's  
8   appropriate. I think the Court went a little farther  
9   than that. The order speaks for itself if you'd like  
10   me to address it, I can.

11          JUDGE BRODSKY: Well, if you have any comment  
12   on it, go ahead.

13          MS. SATTER: The Ogle County Court ordered that  
14   one-third of New Landing's revenues be set aside and  
15   they also ordered New Landing to report to the  
16   Environmental Enforcement Bureau's attorney on the  
17   payment of expenses and the receipt of revenues, that  
18   is not a receiver; but it is supervision and as you  
19   know, we filed a motion for receiver requesting that  
20   the Commission seek a receiver before the Ogle County  
21   Circuit Court and part of the reason for that is that  
22   the order that the Judge entered is not as

1 comprehensive as we'd like to see and we think in  
2 light of the Commission's overall view of the  
3 situation, the Commission is in a position to help  
4 the Court make a decision on -- a more comprehensive  
5 decision on the matter. So that is why we  
6 specifically asked that the Commission find that they  
7 should request a receiver from the Circuit Court as  
8 well. We had put that in our pretrial memo but we  
9 just reiterated that in our motion.

10 JUDGE BRODSKY: Okay. Miss Felton, you want to  
11 respond to these?

12 MS. MURAN FELTON: Yes, in response to the  
13 motion it was just filed on Wednesday. The Company  
14 plans to file a response objecting to it, of course,  
15 in light of the fact that the matter has -- is being  
16 taken up by Ogle County and being handled there at  
17 the current time. As was just stated by Miss Satter,  
18 the -- currently the order was denied, so the Company  
19 would like some time to object to that and file that  
20 formally.

21 MS. SATTER: Could I suggest that that matter  
22 be taken with the case? In other words, when we

1     brief the case we can brief the appropriateness of a  
2     question for a receiver --

3             MR. ARMSTRONG:   Miss Satter, can you use the  
4     mic?   I'm having a hard time hearing you.

5             MS. SATTER:    I'm sorry.   Would you like me to  
6     repeat?

7             MS. MURAN FELTON:   Please.

8             MS. SATTER:    I suggested that the matter of a  
9     receiver be taken with the case, we're about to have  
10    evidentiary hearings, we'll have initial briefs.   We  
11    put the question of receiver in our pretrial memo.   I  
12    think that way, the Commission can consider it  
13    comprehensively with the case overall.

14            JUDGE BRODSKY:   Is the material that you're  
15    basing the motion upon something that you're going to  
16    provide the evidence for in the next couple of days?

17            MS. SATTER:    Yes.

18            MS. MURAN FELTON:   Your Honor, we would prefer  
19    just -- that the motion stand on its own and it be  
20    handled separately, that we file a response and that  
21    your Honor takes this motion up on its own.   It  
22    shouldn't be tagged onto this particular proceeding.

1 We should have a chance to evaluate it, cross-examine  
2 witnesses, if need be in this particular issue and  
3 have that decided separately as it is distinct from  
4 the rate case.

5 MS. SATTER: If I may respond?

6 JUDGE BRODSKY: Go ahead.

7 MS. SATTER: You asked that the parties prepare  
8 a pretrial memorandum. The Office of the Attorney  
9 General did that. It was filed on the date it was  
10 due. There was no objection to the pretrial memo.  
11 There's been plenty of time to object to it. The  
12 motion for receiver -- the request for receiver was  
13 contained in the pretrial memo there has been  
14 adequate notice. In our initial direct testimony of  
15 Scott J. Rubin, we specifically suggested that a  
16 receiver be appointed for this utility. This is not  
17 a new issue. This is an issue that has -- that we  
18 raised from the very beginning of this case, so we  
19 would request that it not be separated out, that will  
20 cause redundancy, extra work, repetition for no real  
21 purpose and the notice has been given.

22 MS. MURAN FELTON: Your Honor, we would still

1 object. This issue was just recently, if at all,  
2 raised in the pretrial memorandum filed by the  
3 Attorney General's Office. It was denied by the  
4 Circuit Court and the Company takes issue with the  
5 Attorney General's Office attempting to try to the  
6 enforcement matter before your Honor and the  
7 Commission.

8 JUDGE BRODSKY: Well, in one sense it will be  
9 tried by the Circuit Court any way if it goes that  
10 far. I think at this point -- I think at this point  
11 I'm tempted not to sever it. I think some of the  
12 material undoubtedly will be repetitious. To the  
13 extent that it's separate evidence, though, it should  
14 be identified as evidence that's pertaining only to  
15 the motion for receivership and not to the rate case.  
16 Hopefully that addresses the concerns as -- to the  
17 extent that it's possible to do so.

18 Now, if the -- even if the motion is  
19 successful, that only puts it in front of the  
20 Commission. If the Commission finds that it should  
21 continue on, then it goes to the Circuit Court. So  
22 in that situation, there is still a lengthy

1     evaluative process that remains, it would not be a  
2     final decision by the Commission that would result in  
3     the receivership, though, that would be something  
4     that would be determined by the court or  
5     alternatively, the Commission may -- excuse me, the  
6     court may find that it's not warranted even if the  
7     Commission petition issues or it's possible that it  
8     may not even get that far at this point, it's hard to  
9     say.

10                     So with that --

11             MS. VonQUALEN:    Judge?

12             JUDGE BRODSKY:    Go ahead.

13             MS. VonQUALEN:    I also wanted to raise to your  
14     attention this motion that Staff filed, we asked for  
15     two forms of relief.  One was the request that the  
16     Commission make a finding that they should go to the  
17     Circuit Court to have a receive receiver appointed.  
18     The second one was requesting an order addressed to  
19     the Company ordering that they desist from making  
20     payments to affiliated interests for which no  
21     Commission approved affiliated interest agreement  
22     exists.  That is a matter that concerns Staff because

1     it appears that, at this point, the assets of the  
2     utility are being used for purposes which have not  
3     been approved by the Commission and it appears from  
4     the evidence that we've seen and that you will hear  
5     today and tomorrow, that this is going on on an  
6     ongoing basis and it does cause Staff some concern;  
7     and that particular part of our motion, we would like  
8     a ruling on prior to June or whenever the Commission  
9     is going to make an order in the rate case.

10           JUDGE BRODSKY: All right.

11           MS. MURAN FELTON: Your Honor, if I might, the  
12     Company, of course, would respectfully request time  
13     to respond to that particular motion as well.

14           JUDGE BRODSKY: Okay. So Staff will file a  
15     proposed draft interim order so that if your evidence  
16     is successful in establishing that the relief is  
17     warranted, then that can be put in front of the  
18     Commission, it's something that the Commission would  
19     have to enter an order on.

20                   As far as the Company, then go ahead  
21     and respond to it in the same time frame. Now, with  
22     respect to that, I better get a deadline for

1     responses.   When were you anticipating having that  
2     response filed?

3             MS. MURAN FELTON:   Your Honor, we would request  
4     three weeks from today to file a response.   This week  
5     is out for us so it will give us two weeks to file  
6     a -- prepare and file a response to these motions --  
7     for this motion.

8             JUDGE BRODSKY:    So that puts it when?

9             MS. MURAN FELTON:   We would request April 25th,  
10    three weeks from today.

11            MS. VonQUALEN:    Judge?

12            JUDGE BRODSKY:    I think it's a bit lengthy.

13                               Go ahead.

14            MS. VonQUALEN:    In light of the seriousness of  
15    the situation, we would ask that they have a shorter  
16    period of time.   They did receive the motion last  
17    Wednesday, so they've had it for nearly a week now.  
18    According to the administrative rules, typically  
19    they're given two weeks to respond, that would be  
20    April 13th.   Staff would ask for a week to reply.   We  
21    would file a draft proposed interim order on  
22    April 20th.



1 MS. MURAN FELTON: Your Honor, it hasn't been a  
2 week. We just received it on Wednesday at the end of  
3 the day and I've been preparing for a hearing, so I  
4 would mischaracterize the almost a week.

5 JUDGE BRODSKY: All right. Here's what we're  
6 going to do: Friday, April 15th for responses from  
7 the Company. April 22nd for replies from Staff and  
8 intervenors.

9 MR. LOWE: I'm sorry, your Honor, I didn't  
10 catch that last date.

11 JUDGE BRODSKY: April 22nd.

12 MR. LOWE: Thank you.

13 MS. SATTER: Could any party respond to the  
14 motion or do you want to wait for intervenors to file  
15 something if we will at --

16 (Fire drill)

17 JUDGE BRODSKY: Let's go off the record for  
18 2 minutes.

19 (Break taken.)

20 JUDGE BRODSKY: All right. So where were we?  
21 We were talking about April 15th for all responses to  
22 the Company to whatever you're going to respond to.

1           MS. MURAN FELTON: Absolutely. Your Honor, we  
2 would take issue with anyone other than the filing --  
3 anyone other than the Commission filing a -- any  
4 replies to our response or responses to the motion in  
5 general, even. This is only a motion where the  
6 Commission has the authority and standing to grant  
7 this, not any other party.

8           JUDGE BRODSKY: You know what, we have a whole  
9 table full of people who are participating in this  
10 case and if you are going to file a response, they  
11 can file a reply. Obviously, the Commission is the  
12 one who gets to determine whether or not they're  
13 going to issue the petition to the Circuit Court; but  
14 that doesn't bar the Commission from considering the  
15 motions of -- whether it be the Commission Staff or  
16 whether it be the Attorney General and, so I'm not  
17 going to limit replies to your response.

18           MR. ARMSTRONG: Am I allowed to express a view  
19 on this?

20           JUDGE BRODSKY: This is just going to be the  
21 trial for 04-0610, so notwithstanding that, this is a  
22 procedural matter setting it. I would ask your

1 attorney to inform us of your views.

2 Miss Felton is there something you --

3 MR. ARMSTRONG: If I may, I would. Am I  
4 allowed to make a comment or am I not?

5 JUDGE BRODSKY: If Miss Felton has a position  
6 that she wishes to establish on behalf of New  
7 Landing, then, fine; if there's other commentary, he,  
8 no.

9 So yes or no, Miss Felton?

10 Yes or no?

11 MS. MURAN FELTON: The only thing I would like  
12 to make a point about is that the AG already made  
13 their arguments in the Ogle County case so for them  
14 to be making their arguments here when it was  
15 unsuccessful in the Ogle County case and more  
16 appropriately placed there, the Company would just  
17 object to the extent of any further responsive motion  
18 practice with respect to this issue.

19 JUDGE BRODSKY: I presume that since the motion  
20 in Ogle County Court is of record and available to  
21 everybody who is bringing these motions that they  
22 have something to present to the Court that the Court

1     hasn't considered, assuming that if gets to the  
2     Court. Now, if they go to the Circuit Court of Ogle  
3     County and present exactly what's been presented  
4     before, then I guess that will be an issue between  
5     the Circuit Court of Ogle County and those parties.  
6     So I would presume that in their filings and in their  
7     arguments, they're going to be careful to highlight  
8     something that has not been made of record, that's  
9     their responsibility to act properly under accordance  
10    with the rules of practice and responsibility and I  
11    don't think that that's going to be a matter that  
12    we're even going to be able to weigh.

13                   As far as the Commission  
14    determination, that will be strictly under 220 ILCS  
15    5-4-501 and whether that's new material or old  
16    material for the Circuit Court, if it gets to the  
17    Circuit Court, that's not something that I would be  
18    able to make a determination on one way or the other.

19                   So, I guess to the extent that that  
20    was an objection, it's going to not persuade me to  
21    not allow for the briefing on the matter and I want  
22    to emphasize for the record that I'm not making a

1 final decision on the motions today and that the  
2 Commission will be the one to take up that matter.

3 Is there anything further on these  
4 motions for receivership?

5 MS. SATTER: Well, I just wanted to comment,  
6 you had asked that we try to identify the evidence  
7 that's concerning a receiver, we would submit that  
8 most of the evidence that we've presented concerns a  
9 receiver but certainly when we do our brief, with  
10 will identify specifically what information we're  
11 relying on. I think it would be awkward and -- it  
12 would be difficult to do that during the course of  
13 the hearing, though, so I'm asking, you know, leave  
14 to do it in that format instead of trying to identify  
15 it in the course of cross-examination.

16 JUDGE BRODSKY: Well, obviously, with  
17 cross-examination you're a little bit limited but I  
18 think you can still do it. What I had asked was that  
19 information that you're presenting with respect to  
20 your receivership motion just be identified that  
21 way -- I think, certainly, you'll be able to do it in  
22 a -- when you enter a pattern of questions or a line

1 of questions. I don't expect you to preface each  
2 question but I think -- generally speaking, I think  
3 it's not so impossible to organize the materials so  
4 that we can readily identify the material that you're  
5 specifically targeting towards supporting your motion  
6 versus the material that's going to the rate case.  
7 There may be some cross over but, you know, I think  
8 it will help the record to keep them as separate as  
9 possible to minimize the tangle, especially if you  
10 intend to rely on it subsequently.

11 MS. SATTER: Okay. I'll do my best.

12 JUDGE BRODSKY: Thank you. All right. Are  
13 there any other pretrial matter we have to wrap up  
14 before we get started?

15 MS. VonQUALEN: Yes, Judge. I would like to  
16 bring up the stipulations that I sent to the Company  
17 last week where I had -- Staff had requested that the  
18 Company stipulate to certain responses to data  
19 requests. We had requests requested -- and I'll just  
20 read off the list of the requests that we had wanted  
21 to put into evidence. We had requested that they  
22 stipulate to the Company responses to FD-7, FD-8,

1 FD-9, FD-10, FD-2, FD-13, FD-15, FD-17, FD-18, AG

2 2.17, AG 3.1, WD 1.08, WD 1.12, AG 4.17 and AG 4.7.

3 JUDGE BRODSKY: Do you have a written list that  
4 you could circulate?

5 MS. VonQUALEN: Not one that's very formal.

6 Would you like a very informal list?

7 JUDGE BRODSKY: If you have extra copies, that  
8 may be helpful.

9 MS. MURAN FELTON: Your Honor, the Company  
10 agreed to some of these requests to stipulate to the  
11 data requests and then subsequently realized there  
12 was an inadvertent oversight on a couple of data  
13 questions. Would you like me to read which ones we  
14 stipulate to?

15 JUDGE BRODSKY: Yes, go ahead.

16 MS. MURAN FELTON: The Company will agree to  
17 the following data requests: FD-7, FD-12, FD-17,  
18 FD-18, WD 1.08, AG 3.1, and AG 4.17.

19 JUDGE BRODSKY: Okay. And you will not  
20 stipulate to the remainders?

21 MS. MURAN FELTON: That's correct.

22 JUDGE BRODSKY: Is there something further?

1 MS. SCARSELLA: Yes. Staff would ask leave,  
2 then, just to file electronically the data requests  
3 that the Company has agreed to stipulate to and some  
4 Staff Cross Exhibit 1, group -- Staff Group Cross  
5 Exhibit 1.

6 JUDGE BRODSKY: Okay. So that would consist of  
7 FD 7, 12, 17 and 18, AG 3.1, AG 4.17 and WD 1.08; is  
8 that correct?

9 MS. VonQUALEN: Yes.

10 MS. MURAN FELTON: No objection.

11 JUDGE BRODSKY: Okay. So then leave to file  
12 that is granted. You'd be filing that on E-docket --

13 MS. VonQUALEN: Yes.

14 JUDGE BRODSKY: -- subsequent to the proceeding  
15 today?

16 MS. VonQUALEN: Depending how long it goes  
17 today, either today or tomorrow when we have a chance  
18 to file it, yes.

19 JUDGE BRODSKY: That's fine.

20 MS. VonQUALEN: In addition, we also requested  
21 that the Attorney General's Office agree to stipulate  
22 to certain documents.



1 JUDGE BRODSKY: Okay. Is this from the same  
2 list or a different list?

3 MS. VonQUALEN: These are different ones. We  
4 had requested that the Attorney General's Office  
5 stipulate to responses they provided to RP 1 and  
6 RP 2.

7 MS. SATTER: That's fine.

8 JUDGE BRODSKY: Okay.

9 MS. VonQUALEN: So we would ask leave to file  
10 those as Staff -- as Staff Cross Exhibit 2.

11 JUDGE BRODSKY: Is this Group Cross?

12 MS. VonQUALEN: Yes.

13 JUDGE BRODSKY: Okay. So just to confirm,  
14 then, the Attorney General is stipulating to RP 1 and  
15 RP 2?

16 MS. SATTER: Yes.

17 JUDGE BRODSKY: And that will be filed as Staff  
18 Group Cross Exhibit 2; is that correct?

19 MS. VonQUALEN: Yes.

20 JUDGE BRODSKY: Okay. Is there anything  
21 further with respect to stipulations?

22 (No response.)

1                   Is there anything further with respect  
2   to anything else before we get started with the  
3   trial?

4           MS. MURAN FELTON:   Yes, your Honor, there's one  
5   remaining thing on behalf of the Company.   The Staff  
6   filed supplemental testimony specifically to  
7   Mr. Griffin, Mr. Stuck and Miss Harden filed  
8   testimony on Wednesday, March 30th.   The Company  
9   moves to strike that testimony as it was late-filed  
10   and therefore it's prejudicial to the Company in  
11   terms of preparing a response or cross-examination on  
12   those witnesses.

13                   And, secondly, the information has  
14   been readily available to the -- these particular  
15   witnesses that they could have provided this  
16   testimony at an earlier date.

17           JUDGE BRODSKY:   Does Staff want to respond?

18           MS. VonQUALEN:   Judge, the testimony was filed  
19   on the date that was provided for additional  
20   supplemental testimony and the testimony was -- the  
21   issues in this case and I believe it's relevant and  
22   it's important for the record in order for the

1 Commission to have a full and complete record.

2 JUDGE BRODSKY: We're talking about what's been  
3 label for identification as Staff Exhibits 10, 11 and  
4 12; is that what we're talking about?

5 MS. MURAN FELTON: Yes. And it was my  
6 understanding that the March 30th deadline was for  
7 purposes of filing stipulations.

8 JUDGE BRODSKY: All right. This is about maybe  
9 15, maybe 18 pages worth of filings. It seems to me  
10 that the Company, throughout the course of the case,  
11 has enjoyed quite a bit of flexibility with their  
12 filings, so I'm not going to strike the testimony.

13 MS. MURAN FELTON: Your Honor, if I might,  
14 though, the information provided by Staff actually  
15 creates an entirely new rate case and to provide this  
16 at the late hour, we find very prejudicial. It  
17 changes their opinions, their testimony in general,  
18 their exhibits, all the information is new in that  
19 respect as far as what they provide.

20 JUDGE BRODSKY: Why don't you outline the  
21 extent of the changes for us, then.

22 MS. MURAN FELTON: The figures, the

1     calculations in the exhibits, the scheduled that are  
2     provided, specifically, the rate of return, the rate  
3     levels and the rate structure have all been changed.

4             JUDGE BRODSKY:   Has the methodology?   Because  
5     if it's simply the fact that a number became known --  
6     that one of the inputs was no longer correct, the  
7     number, and they put in a new input and ran the same  
8     process, I'm not exactly sure how this would be earth  
9     shattering information.

10            MS. MURAN FELTON:   Sure.   That methodology may  
11     be the same, your Honor, but the numbers themselves  
12     to which they subsequently amended them have been  
13     known for months.   So to change the numbers at the  
14     very late hour in light of the fact that this  
15     information has been available to them is surprising  
16     to the Company and also creates a completely  
17     different opinion by which Staff now stands.

18            MS. VonQUALEN:   Judge, if you recall, this  
19     matter was set for hearing several weeks ago and it  
20     was continued on basically the eve of hearing because  
21     Staff had received additional information from the  
22     Attorney General's Office.   At that time, we asked

1     for and received a date to provide additional  
2     supplemental testimony. We provided that testimony,  
3     as per schedule on the schedule on this case on March  
4     the 30th, some numbers have changed. Staff's  
5     analysis is basically the same but the changes in the  
6     numbers are based upon the additional evidence that  
7     we received from the Attorney General's Office.  
8     There is nothing -- Staff is this not outside the  
9     schedule of this case by filing this additional  
10    supplemental testimony. As a matter of fact, this is  
11    precisely the reason the hearing was continued to  
12    this date instead of being held at the originally  
13    schedule trial date.

14           JUDGE BRODSKY: I recall that information  
15    conversation. At this point what I haven't heard is  
16    anything specific that would really change my  
17    opinion, so I'm going to, once again, deny the motion  
18    to strike.

19                   While we're on that topic, what is the  
20    identification of exhibits that Staff is still  
21    planning to use or planning to offer?

22           MS. VonQUALEN: That's a very good question,

1 Judge and we have not gone over with staff witnesses  
2 exactly which testimonies are going to be replaced.  
3 I know we have filed a number of testimonies and I'm  
4 really not sure if all of them need to be put in the  
5 record or not. At this point, if you would wait  
6 until after our lunch break, we will be able to give  
7 you a list of exhibit.

8 JUDGE BRODSKY: Okay. That's fine. I guess as  
9 long as we have it before Staff's case starts is  
10 really all that's required, I just wasn't sure.

11 Okay. With that, are there any last  
12 final items before we get started?

13 (No response.)

14 Hearing none, okay, let's see, we've  
15 already been at this an hour so I think before we get  
16 started, we will take a break for 10 minutes and we  
17 will reconvene at 10:40.

18 (Recess taken.)

19 (Whereupon, New Landing Utility  
20 Exhibit Nos. 1 and 2 were  
21 marked for identification  
22 as of this date.)

1 JUDGE BRODSKY: You want to start with an  
2 opening statement?

3 MS. MURAN FELTON: No opening statement, your  
4 Honor. The Company would just like to call its first  
5 and only witness, Gene Armstrong.

6 JUDGE BRODSKY: All right. Hold on, then.  
7 Does anybody else wish to make an opening statement?

8 MS. VonQUALEN: I have one that I could make if  
9 you'd like to hear it, Judge. I don't think it's  
10 going to be terribly helpful for you but I'm  
11 certainly happy to give it if you'd like to hear it.

12 JUDGE BRODSKY: Well, I guess it's really more  
13 your choice than mine and, you know, if you want to  
14 do it now or if you want to save it or if you don't  
15 want to do it at all, that's up to you.

16 MS. VonQUALEN: I'll go ahead, thank you.

17 May it please the Court, Counsel,  
18 after more than 20 years, New Landing has filed for a  
19 general increase in water and sewer rates. After a  
20 review of the information supplied by the Company,  
21 Staff has made recommendations for adjustments to  
22 rate base and revenue requirement.

1                   Further, Staff has proposed an overall  
2   cost of capitol with recommendations for capitol  
3   structure, cost of long-term debt and cost of common  
4   equity.

5                   Finally, Staff has made  
6   recommendations with respect to the Company's rules,  
7   regulations and conditions of service as well as its  
8   cost of service and rate design.

9                   Staff witness Griffin provides Staff's  
10   recommendation in regards to rate base and revenue  
11   requirement. His analysis started with utility plant  
12   balances approved in the Company's last rate order.  
13   He added plant additions for which the Company was  
14   able to provide documentation. Staff witness  
15   Griffin's testimony recommends a reallocation between  
16   water and sewer based on total utility plan.

17                   The evidence will show that the  
18   Company has failed to maintain proper continuing  
19   records as required by the Uniformed System of  
20   Accounts for water utilities and Uniformed System of  
21   Accounts for sewer utilities.

22                   Staff witness Griffin will provide



1 testimony supporting adjustments to accumulated  
2 depreciation, contribution and aid of construction to  
3 reflect the changes in the utility plan and to  
4 provide for cash working capitol to ensure that the  
5 Company can meet its current cash obligations.

6                   The evidence will show that the  
7 company has been making payments to affiliated  
8 interests for which agreements have not been approved  
9 by the Commission. At the same time, the Company's  
10 operators and chemical suppliers are not being paid.

11                   The evidence will have show that the  
12 Company has failed to adequately maintain its water  
13 and sewer facilities; that New Landing has been put  
14 on notice of these deficiencies over a period of  
15 years but has failed to correct them.

16                   Mr. Griffin will recommend an  
17 adjustment to account for the 2005 payment due under  
18 the contract with the Utility Service Company for  
19 water tank repair and maintenance work amortized over  
20 ten years.

21                   The evidence will support that an  
22 adjustment will support an adjustment to contract

1 service, dash, accounting to eliminate expenses for  
2 services performed over several years in favor of an  
3 amount reflective of a level cost sufficient for the  
4 annual preparation of tax returns and miscellaneous  
5 accounting services.

6 Mr. Griffin will support an adjustment  
7 to contract services, dash, legal to use legal  
8 expenses as projected by the Company for 2008, which  
9 is stated as more typical of the legal expenses other  
10 small individual water and sewer utilities would  
11 incur.

12 Mr. Griffin will also testify that the  
13 Company's expenses for contract services management,  
14 rent and billing clerk relate to services performed  
15 by affiliated interests for which agreements have not  
16 been approved by the Commission. In addition,  
17 Mr. Griffin will support an adjustment to contract  
18 services, dash, other for water repair and  
19 maintenance expense.

20 The evidence will support an  
21 adjustment to regulatory expense to add the cost of  
22 attorney's fees for this rate case that were billed

1 as of the time of his testimony amortized over five  
2 years for rate paying purposes.

3 Mr. Griffin will support an adjustment  
4 to the depreciation expense relating to adjustments  
5 for a utility plan.

6 Staff witness Phipps has prepared a  
7 detailed and reliable analysis of the Company's  
8 capitol structure, cost of long-term debt and cost of  
9 common equity. In the event the Commission  
10 determines to allow a rate of return, the evidence  
11 will support an overall cost of capitol of  
12 8.38 percent as opposed to the Company's proposed  
13 rate of return of 10.30 percent.

14 Staff witness Maar provides testimony  
15 supporting various changes to the Company's proposed  
16 rules, regulations and conditions of service tariffs  
17 for water and sewer service.

18 The Company did not provide a cost of  
19 service study nor the detailed cost and plant  
20 information necessary in order to generate the rates  
21 that are considered cost based. The evidence will  
22 support staff witness Harden's rates, which are based

1 on traditional components of a customer and usage  
2 charge for New Landing customers. The evidence will  
3 support leaving the availability charge at \$47.50.

4 The evidence will show that the  
5 Company cannot provide a reasonable a foundation to  
6 account for the differentiation of rates between side  
7 yard lots and availability customers.

8 The evidence will supporting breaking  
9 the Company's proposed revenue into water usage  
10 billing units. Miss Harden will calculate the  
11 Company's water usage billing units.

12 The evidence will also show that all  
13 of the Company's customers are residential customers,  
14 therefore, a single usage block of metered water  
15 company rather than three tired blocks as proposed by  
16 the Company is appropriate.

17 The evidence will support a monthly  
18 customer charge in place of the minimal bill --  
19 minimum bill that is currently in the tariffs.

20 The evidence will show that a monthly  
21 customer charge will allow the Company to recover  
22 those costs that are independent of water usage and

1     that any other revenue -- and that -- I'm sorry, and  
2     that other revenue can be generated through the usage  
3     charge.

4                     The evidence will support -- the  
5     evidence will not support the Company's proposed  
6     \$7.50 monthly surcharge to the water bill for 88  
7     customers in the south half of Lost Nation  
8     subdivision to recover repair costs for the water  
9     lines that serve those customers.

10                    The evidence will show that the repair  
11     costs for those 88 customers and all Company  
12     customers are already included in Company expenses.

13                    The evidence will support a flat  
14     charge for sewer service.

15                    After the ALJ has heard all of the  
16     evidence, the Staff will request a finding accepting  
17     Staff's adjustments and resulting in a water rate  
18     base of \$319,175 and sewer rate base of \$260,492;  
19     asking the Company to be ordered to institute a  
20     continuing property records system within three  
21     months of an order of this case.

22                    The staff will request the Commission

1 to consider whether an 8.38 percent rate of return is  
2 appropriate or in the alternative, whether that rate  
3 of return would create an imbalance between a service  
4 provided by the Company to rate payers and the rates  
5 provided to the Company by rate payers.

6 Staff will request a finding ordering  
7 changes to the Company's proposed rules, regulations  
8 and conditions of service and adopting Staff's cost  
9 of service and rate design. Thank you.

10 JUDGE BRODSKY: Thank you. Do either of the  
11 intervenors wish to make an opening statement at this  
12 time?

13 MS. SATTER: I will make a short opening  
14 statement.

15 The people of the state of Illinois  
16 will submit to the Commission that New Landing  
17 Utility, in order to operate as a safe, adequate and  
18 reliable water and sewer utility must be removed from  
19 the management of Gene Armstrong.

20 We are requesting that the Commission  
21 petition the Circuit Court for a receiver.

22 And we will show that New Landing

1     Utility has failed to provide safe, adequate and  
2     reliable service to its customers, that it lacks  
3     technical, financial and managerial fitness; that it  
4     has practically abandoned portions of its service  
5     territory by disowning them and declining to maintain  
6     them or to recognize its ownership and its  
7     responsibility to provide service. And we will also  
8     submit that there are violations of Commission  
9     orders.

10                     We believe the evidence also will show  
11     is that the rates that are currently paid by New  
12     Landing rate payers are sufficient, particularly,  
13     that the Company has breached the regulatory bargain  
14     that requires the Company to provide safe, adequate  
15     and reliable service and to maintain its plant. As a  
16     result, it should not be entitled to receive a return  
17     on its investment.

18                     We will also show that New Landing  
19     Utility has not met its burden of proof to  
20     demonstrate what its investment capital is, what its  
21     expenses are or that its expenses have been lawfully  
22     incurred, specifically, there are problems with the

1 records, there are requests for deferred -- for  
2 recovery of deferred costs, which is in violation of  
3 the law and there is evidence of affiliated interest  
4 payments.

5                   We request -- in our testimony, we  
6 have made adjustments to the documents and the  
7 presentation presented by New Landing Utility and we  
8 submit that that evidence will show, particularly,  
9 the analysis done by David Effron, we'll show that  
10 there is sufficient revenue to cover the expenses and  
11 that the utility tee should not receive an increase  
12 at this time.

13           JUDGE BRODSKY: Thank you. Do you have -- the  
14 Property Owners at this time?

15           MR. LOWE: No, we'll waive.

16           JUDGE BRODSKY: Okay. Is the Company ready to  
17 proceed?

18           MS. MURAN FELTON: Yes, your Honor, the Company  
19 is.

20                   New Landing Utility calls Gene  
21 Armstrong.

22                   (Witness sworn.)



1                    GENE ARMSTRONG ,  
2       called as a witness herein, having been first duly  
3       sworn, was examined and testified as follows:

4                    DIRECT EXAMINATION

5                    BY

6                    MS. MURAN FELTON:

7                Q        Would you please state your name and  
8       business address .

9                A        My name is Gene L. Armstrong.    My business  
10      is address is 1111 South Boulevard, Oak Park,  
11      Illinois 60302.    I also reside in Oak Park.

12              Q        And by whom are you employed and in what  
13      capacity?

14              A        I am employed as the president of Gene L.  
15      Armstrong and Associates, which is a law firm which I  
16      am the principal shareholder.    I also serve as the  
17      president of New Landing Utility, Incorporated.

18              Q        Did you submit prefiled testimony in this  
19      proceeding?

20              A        I did.    I filed direct testimony on  
21      September 20th and I filed supplements to my direct  
22      testimony in February of this year.

1           Q     And is that the first prefiled testimony  
2     you referenced, the direct testimony that has been  
3     currently marked as New Landing Exhibit 1 consisting  
4     of 19 pages and 10 exhibits?

5           A     This appears to be the testimony that I  
6     prepared dated September 20th, 2004, as New Landing  
7     Exhibit No. 1.

8           Q     And you also submitted the subsequent  
9     prefiled testimony that has been marked for  
10    identification as New Landing 2 which consists of 1  
11    page of testimony and 1 exhibit?

12          A     That's correct.

13          Q     Do you have any changes to either of the --  
14    New Landing Exhibit 1 or the testimony in New Landing  
15    Exhibit 2 and any of its exhibits?

16          A     No.

17          Q     And if I ask you the same questions that  
18    are in the testimony, would your answers be the same  
19    today?

20          A     The questions -- if the questions in  
21    Exhibit 1 were asked of me, my answers would be --  
22    the answers in Exhibit 1; with respect to Exhibit 2,

1     there are no questions, but if questions -- these are  
2     supplements to the answers that appear in Exhibit 1,  
3     so, my answers to Question 22 in Exhibit 1 would  
4     include what I have provided in Exhibit 2. In my  
5     answer to Question 41 in Exhibit 1 would include what  
6     I have provided as a supplement to the answers in  
7     Exhibit 2.

8           Q     With respect to Exhibit 1, the testimony  
9     provided, you would provide the same testimony today  
10    if you were asked to provide it?

11          A     Yes, I would.

12          MS. MURAN FELTON: Your Honor, I move to offer  
13    New Landing Exhibits 1 and 2 and their exhibits to  
14    cross-examination and would tender Mr. Armstrong for  
15    cross-examination at this time.

16          JUDGE BRODSKY: Okay. So Exhibit 1 is the  
17    direct testimony?

18          MS. MURAN FELTON: That's correct.

19          JUDGE BRODSKY: Exhibit 2 is the supplement?

20          MS. MURAN FELTON: That's correct.

21          JUDGE BRODSKY: And then the attachments in  
22    each case?

1           MS. MURAN FELTON:   Yes.   There are 10 exact  
2   exhibits to New Landing Exhibit 1 and there's 1  
3   exhibit to New Landing Exhibit 2?

4           JUDGE BRODSKY:   Do you have an extra copy of  
5   the 10 attachments to Exhibit 1?

6           MS. MURAN FELTON:   Yes, I do.   I've got three  
7   copies I will provide for you today.   Would you like  
8   that?

9           MS. SATTER:   Would it be possible to identify  
10   those 10 exhibits, I seem to have fewer than 10.

11          JUDGE BRODSKY:   Is this the list of NLU  
12   Exhibits that follows Page 19 of the direct  
13   testimony?

14          MS. MURAN FELTON:   To identify them, they're  
15   listed in the exhibit list, which is exactly as your  
16   Honor indicated, at the back of -- after Page 19 on  
17   Exhibit 1.

18          MS. SATTER:   Okay.   Thank you.

19          JUDGE BRODSKY:   Okay.   Is there any object to  
20   the admission of those documents subject to cross?

21          MS. VonQUALEN:   Staff has no objection.

22          MS. SATTER:   No.

1 JUDGE BRODSKY: Okay. Then those exhibits are  
2 admitted subject to cross.  
3 Who wishes to begin?  
4 MS. SATTER: I can begin.  
5 JUDGE BRODSKY: Please proceed.  
6 MS. SATTER: Thank you.  
7 CROSS-EXAMINATION  
8 BY  
9 MS. SATTER:  
10 Q Good morning, Mr. Armstrong.  
11 A Good morning, Miss Satter. Can you pull  
12 that mic closer.  
13 Q Sure.  
14 A My hearing aids in this room are very  
15 troublesome to me; but I think I'll hear you if you  
16 talk into that mic.  
17 Q Is this better?  
18 A Yes, it is.  
19 Q Now, you testified that you're the  
20 president of New Landing Utility; correct?  
21 A Yes, I am.  
22 Q And you've been the president since 1984?

1           A     Mid-year, June, late May, early June 1984.

2           Q     Are you the only officer of New Landing

3     Utility?

4           A     I am.

5           Q     Are you the only director of New Landing

6     Utility?

7           A     I am.

8           Q     There's no board of directors for the New

9     Landing Utility; is that correct?

10          A     I am the board of directors.

11          Q     And New Landing Utility is wholly owned by

12     DAME Company, that's cap D-A-M-E Company?

13          A     Yes. All the letters are capitals and DAME

14     owns all of the common stock of New Landing Utility.

15          Q     And you are the sole shareholder of DAME

16     Company?

17          A     I am the sole shareholder of DAME Company.

18          Q     Are you the sole director of DAME Company?

19          A     I am.

20          Q     And, again, you are the only member of the

21     board of directors?

22          A     That's right.

1           Q     Now, before you became president of New  
2     Landing Utility, you had represented the Utility in  
3     matters before the Illinois Commerce Commission and  
4     before the Appellate Court; is that correct?

5           A     Yes, I have. Yes, I did.

6           Q     And you were retained to represent New  
7     Landing Utility in connection with its appeal of the  
8     certificate of public convenience and necessity  
9     issued by this Commission in 1973 or 1974; is that  
10    correct?

11          A     The certificate was issued in 1972 and I  
12    was retained to represent the Utility in respect to  
13    its appeal from various conditions that the  
14    Commission attempted to attach to that certificate.

15          Q     Did you also handle New Landing Utility's  
16    first rate case?

17          A     I did. I represented the Utility when it  
18    made its first application for rates, rules,  
19    regulations and conditions of service.

20          Q     Do you recall, was that Docket No. 79-0195?  
21    If you recall.

22          A     It sounds right.

1           Q     Now, in your testimony, you refer to a  
2     management services agreement approved by the  
3     Illinois Commerce Commission?

4           A     There was a subsequent docket that did  
5     present to the Commission for its approval and  
6     service agreement.

7           Q     I'm having my associate show you a document  
8     that we would like to mark as AG Cross Exhibit 1.

9                     (Whereupon, AG Cross  
10                    Exhibit No. 1 was  
11                    marked for identification  
12                    as of this date.)

13   BY MS. SATTER:

14           Q     Can you tell me is this the management  
15     services agreement that you just referred to that is  
16     the one approved by the Illinois Commerce Commission?

17           A     It appears to be.

18           Q     And it's dated November 26th, 1979;  
19     correct?

20           A     It is.

21           Q     And pursuant to this agreement, AMI  
22     provided New Landing Utility with various management



1 services; is that correct?

2 A They were authorized.

3 Q They were authorized to?

4 And the Illinois Commerce Commission  
5 approved that agreement; correct?

6 A In the consolidated cases 79-0673 and 0675.

7 Q And you represented the Utility in  
8 connection with this matter?

9 A I also represented the Utility in the  
10 consolidated cases.

11 Q So when you refer to the consolidated  
12 cases, you mean the case where this agreement was  
13 reviewed?

14 A This agreement was reviewed in 79-0673.

15 Q Now, you asked the Illinois Commerce  
16 Commission on behalf of New Landing Utility for  
17 approval of the management agreement because it was  
18 an affiliated interest agreement; is that correct?

19 A The agreement was -- fit within the  
20 definitions of affiliated interests in what was then  
21 Section 8-A.

22 Q Now, among the reasons that AMI was

1     considered an affiliated interest were that AMI owned  
2     all the outstanding common stock issued by New  
3     Landing Utility; is that correct?

4             A     That would be one of the reasons.

5             Q     And was another reason because AMI  
6     employees served as officers and directors of New  
7     Landing Utility?

8             A     I'm not sure that that as such would make  
9     it an affiliated interest.

10            Q     Do you know whether that was one of the  
11    considerations that the Commission looked at?

12            A     They knew that the people who were serving  
13    as the officers of New Landing Utility were employees  
14    of AMI. I don't know that any of those people were  
15    described as officers or directors of AMI but they  
16    were certainly employees of AMI.

17            Q     Oh, okay, so the fact that the employees of  
18    AMI were doing work for the Utility raised the issue  
19    on an affiliated interest; is that correct?

20            A     No, I think what raised the interest of  
21    affiliated ed interest is AMI owned all the stock.

22            Q     Okay.

1           A     There may have been other factors; but  
2     certainly AMI owned all the stock.

3           Q     Okay. Was that dispositive from your point  
4     of viewed view?

5           A     Pardon.

6           Q     Was that dispositive from your point of  
7     view as to whether or not you needed to obtain  
8     approval?

9           A     I think also the fact that AMI and these  
10    individuals were, in fact, exercising influence over  
11    AMI and had there been a hearing, an investigation to  
12    determine that issue, it would that would have been  
13    the conclusion that the Commission would agree, so  
14    that would also have been a factor. As I sit here, I  
15    don't remember what the other factors, but I have no  
16    question that the ownership of all the stock in and  
17    of itself made AMI an affiliate of New Landing  
18    Utility.

19          Q     So you knew back in 1974 that Commission  
20    approval was needed for a utility to enter into an  
21    affiliated interest agreement -- I'm sorry, 1974, did  
22    I say '74?

1           A     You did say '74 and I knew Section 8-A  
2     before I knew of New Landing Utility.

3           Q     Okay. And do you have any reason to have  
4     changed your mind as to whether or not Commission  
5     approval was necessary for an affiliated interest  
6     agreement between a utility and the affiliate?

7           A     That is still part of the Public Utilities  
8     Act. It is now Section 57-101.

9           Q     And in the absence of Commission approval,  
10    the agreement is void; is that correct?

11          A     I think that's -- I think that's the phrase  
12    the statute used.

13          MS. SATTER: If I can just go back for a  
14    minute. This line of questioning is relevant to the  
15    motion of a receiver, I'm sorry, I might not have  
16    mentioned that at the outset.

17          JUDGE BRODSKY: Okay. Thank you.

18    BY MS. SATTER:

19          Q     Now, on Page 3 of your testimony you say  
20    that DAME Company provides management services to New  
21    Landing Utility; correct?

22          A     It is available to do so, yes.

1           Q     Does DAME Company provide management  
2     services?

3           JUDGE BRODSKY:   Is there an answer to the  
4     question?

5           THE WITNESS:   I'm thinking about -- taking the  
6     time to think about this and ponder it because I'm  
7     trying to backtrack over a period of time.   I think  
8     the answer to that is DAME does not provide services  
9     to New Landing Utility, however, I am the president  
10    of DAME and I am the president of New Landing Utility  
11    and I provide services to the Utility Management  
12    Service to the utility.

13    BY MS. SATTER:

14           Q     Okay.   So on Page 3, the answer to Question  
15    17, when you say there are management services that  
16    DAME Co., provides through me that are not -- that  
17    are in addition to the services NLU obtains under the  
18    agreements it has with independent contractors --

19           A     Yes.

20           Q     -- that's not --

21           A     NLU receives service from me and I am the  
22    president of DAME.

1           Q     So it receives services from you either as  
2     president of DAME or -- excuse me. Let me start  
3     over.

4                     It receives -- NLU receives services  
5     from you either as president of the Utility or as a  
6     representative of DAME Co.?

7           A     Well, DAME Company elects the director,  
8     which is me and the director or names the president,  
9     which is me. So DAME Company by that process, as it  
10    were, provides me to serve as president of New  
11    Landing Utility and I do so.

12          Q     Okay. So DAME Co., provides nothing  
13    separate?

14          A     I don't think they do but it's been a  
15    number of years, I just can't recall while I'm  
16    sitting here today any specific additional  
17    information on this point that I'm able to recall for  
18    you today.

19          Q     So is it your testimony that -- this  
20    agreement that we had marked AG Cross Exhibit 1 dated  
21    November 26th, 1979, is it your testimony that this  
22    exhibit is currently in force between DAME Co. and

1 New Landing Utility?

2 A The agreement that is AG Cross Exhibit  
3 No. 1, all of Associated Mortgage Investors, Inc. --  
4 Associated Mortgage Investors rights under that  
5 agreement were assigned to DAME Company and DAME  
6 Company views it as an agreement that remains in  
7 force.

8 Q Okay. Does DAME Company have employees or  
9 agents who are experienced in the conduct,  
10 management, financing, construction, accounting and  
11 operation of water and sewer properties as provided  
12 in the second -- first whereas clause in the  
13 agreement?

14 A Yes.

15 Q And would that be you?

16 A That's me.

17 Q Now, you don't have any accounting  
18 training, do you?

19 A I'm sorry.

20 Q Have you taken any accounting courses?

21 A I've taken accounting.

22 Q What accounting background do you have?

1           A     I took accounting in college.

2           Q     And when did you graduate from college?

3           A     I graduated -- I guess I graduated three

4     times. I graduated three times in 1963 with a

5     bachelor's degree; I graduated in 1964 with a

6     master's economics mixed and I graduated in 1967 with

7     a law degree.

8           Q     And you took accounting for the 1963

9     degree?

10          A     I took accounting as an undergraduate.

11          Q     And you haven't taken any accounting

12     courses since then?

13          A     I have not.

14          Q     Would you agree with me that you are not an

15     engineer?

16          A     That what?

17          Q     You are not an engineer?

18          A     I have no engineering degree and no

19     engineering training, none.

20          Q     I'm sorry?

21          A     I'm not an engineer.

22          Q     And you do not have any construction



1     experience in terms of building or maintaining a  
2     plant?

3           A     Well, I've had experience in respect to how  
4     that gets accomplished. I have no experience in  
5     performing the construction work. I have not swung a  
6     hammer or saw to saw but I do have experience on how  
7     to get it done.

8           Q     Now, would you agree with me that you had  
9     you have virtually nothing to do with the operations  
10    of New Landing Utility before you purchased it in  
11    1984 and let me define "operations" as the  
12    functioning of the Utility?

13          A     The --

14          Q     Provision of water and sewer service?

15          A     -- operations as you have described them,  
16    were the responsibilities of AMI and whomever they  
17    brought to help perform those functions.

18          Q     And that was not your responsibility?

19          A     I did not get involved in -- I did not get  
20    involved directly in operations. If they asked me  
21    for input on a particular matter, I would try to  
22    provide it.

1           Q     And they would ask you that in your role as  
2     an attorney; is that correct?

3           A     Well, I think they viewed me as an  
4     experienced utility attorney and that, I believe,  
5     encompasses somewhat of a -- not only the knowledge  
6     of utility law and regulations but also a number of  
7     the things that utility executives deal with from  
8     time to time.

9           Q     After you purchased the Utility --

10          A     After DAME purchased it.

11          Q     Excuse me.

12          A     I understand what you mean.

13          Q     That did occur to me after I asked the  
14     question.

15                     After DAME Company purchased the  
16     Utility, did Gene Armstrong, as the president of New  
17     Landing Utility rely on your operators; that is, your  
18     certified water and your certified sewer operators to  
19     manage the operations of the Utility?

20          A     Certainly they were among the people that I  
21     relied upon.

22          Q     And is it correct that you did not have a

1 key to the water plant until sometime in 2002?

2 A There was a long time when I did not have a  
3 key for the water plant. I don't know the exact date  
4 but I do know that I do have one now, but there was a  
5 point in time that I did not have a key.

6 Q Is it correct that when you became  
7 president of New Landing Utility you did not have any  
8 billing or customer relation experience?

9 A Have any what?

10 Q Billing and customer relations experience?

11 A No, that's not true.

12 Q You can explain.

13 A I did have it.

14 Q What was that experience?

15 A I was involved with law firms that have  
16 customer, slash, clients and have to bill their  
17 customers and clients and have to have relations with  
18 them and I'd also had experience with respect to  
19 customer relations in the New Landing Utility service  
20 territory to the extent that the AMI people asked me  
21 to be involved in various aspects of customer  
22 relations.

1           Q     What aspects of customer relations were you  
2     involved in?

3           A     Sued to collect bills was one and to help  
4     prepare responses to certain questions that might be  
5     posed that would seek my input in a response that  
6     they might prepare.

7           Q     Okay. Thank you.

8                     Can you tell me what the whether DAME  
9     Co. has any businesses other than New Landing  
10    Utility?

11          A     Not at this time.

12          Q     Are you paid anything as an agent of DAME  
13    Co.?

14          A     Am I what?

15          Q     Do you receive any compensation?

16          A     I do not. It issues to me no W-2; it  
17     issues to me no 1099. I am not compensated for the  
18     service that I provide to DAME Co.

19          Q     Now, you said previously that AMI  
20     transferred the agreement; that is, AG Cross  
21     Exhibit 1 to DAME Co.?

22          A     Yes.

1           Q     You never requested that the Illinois  
2 Commerce Commission approve that transfer; did you?

3           A     I did not.

4           Q     Now, is DAME Company paid by New Landing  
5 Utility under this AG Exhibit -- AG Cross Exhibit 1  
6 the Management Services Agreement?

7           A     There have been occasions, I'm quite sure,  
8 when the Utility made payment to DAME Company. I  
9 can't say, as I sit here today without looking at the  
10 checks that we have issued for such purposes whether  
11 they were for services that were provided by DAME  
12 Company under this agreement, I can't think of an  
13 instance where the Utility wrote a check to DAME  
14 Company for what DAME Company does under this  
15 agreement. I do tell you that an amount with respect  
16 to the services provided in this agreement has been  
17 accrued as due and owing but I think it's safe to  
18 say, subject to a fairly detailed check which I have  
19 not done, the amounts that have accrued have  
20 generally not been made.

21          Q     We'd like to show you what's been marked as  
22 AG Cross Exhibit 2, which is your response to AG data

1 request 2.3.

2 (Whereupon, AG Cross  
3 Exhibit No. 2 was  
4 marked for identification  
5 as of this date.)

6 BY MS. SATTER:

7 Q Do you see that? Does that appear to  
8 represent the question and New Landing Utility's  
9 response?

10 A This is the response that New Landing  
11 Utility made to data request AG 2.3. I suppose the  
12 only modification, if that's the correct word, might  
13 be to the last two words, the services provided might  
14 have more properly been described as services that it  
15 can provide.

16 Q So if you could modify this response,  
17 that's how you would modify it?

18 A Yes.

19 Q How much -- in your opinion, how much is  
20 New Landing Utility obligated to pay DAME Company  
21 under this Management Services Agreement currently,  
22 let's start with currently?

1           A     On a monthly basis?

2           Q     Yes.

3           A     I believe we still accrue \$550 per month?

4           Q     \$550?

5           A     Yes.

6           Q     Has that increased since January of last

7     year?

8           A     That hasn't increased since 1984.  It's the

9     amount that the Utility was paying AMI.

10          Q     So, in your opinion, the Utility has

11     accrued an obligation of \$550 per, month payable to

12     DAME Co. since -- is it June of 1984?

13          A     Yes.  I guess subject to any adjustment or

14     credit for any amount that may have been paid during

15     the interim.

16          Q     Now, did you provide a statement of the

17     consideration paid and to whom it was paid pursuant

18     to the Management Services Agreement?

19          A     Did I provide what?

20          Q     A statement of the consideration paid by

21     New Landing Utility to DAME Co.?

22          A     I don't understand what you're asking.

1           Q     Okay.  I'll withdraw the question.

2                     Can you tell --

3           A     Are you asking did DAME Company send New  
4     Landing a bill?  No, DAME Company does not send New  
5     Landing a bill.

6           Q     Now, you say in the answer that NLU  
7     believes the agreement adequately describes the  
8     amounts due for services provided.  Can you point me  
9     to anything in particular of this agreement that  
10    describes the amounts due for services provided?

11          A     No.  That part of the answer was incorrect  
12    and then I figured that out later.  I was -- at the  
13    time I prepared the answer to AG 2.3, I had  
14    remembered that the \$550 a month was an amount that  
15    was spelled out in this agreement, in fact, the \$550  
16    a month was not spelled out in this agreement but it  
17    was described in the proceedings as the amount that  
18    New Landing was being obligated and asked to pay to  
19    AMI because an AMI personnel served as president,  
20    vice president, secretary and treasurer of New  
21    Landing Utility --

22          Q     To the best of your --



1           A     -- it was not spelled out in the terms of  
2     this agreement but that's what was being paid  
3     pursuant to this agreement.

4           Q     To the best of your recollection, was that  
5     amount included in the order that the Commission  
6     issued in connection with the approval of this  
7     agreement?

8           A     It's a long order, I'd have to look at it.  
9     To my recollection -- I can't guess about that. I'd  
10    have to look at the order. It may have been, it may  
11    not have been.

12          Q     Okay. Now, when you say all amounts were  
13    accrued, do you know sitting here to today, where in  
14    your filing you identified those amounts?

15          A     Well, in each annual report filed since  
16    1984 an amount of \$6,600, which is 550 times 12 is  
17    split between water and sewer \$3,300 each and it is  
18    shown as a management services experience for water  
19    and management service expense for sewer and that  
20    total amount is each year added to the amounts --  
21    accounts payable to affiliated companies.

22          Q     Is it included in your filing in this

1 docket?

2 A In this docket?

3 Q Yes.

4 A I believe it is in the historic exhibit,  
5 let me just double check. Yes, if you look at NLU  
6 Exhibit ISA-1 for -- the income statement analysis  
7 for the year 2001, 2002 and 2003, in account No. 634,  
8 which is the water side and 734, the sewer side, you  
9 will see that amount.

10 Q That Contract Services Management?

11 A Yes.

12 Q Okay. So there's \$7,000 for water and  
13 \$7,000 for sewer equalling \$14,000; is that correct?

14 A That's in the pro forma. Let me get that  
15 before me so we can talk about that.

16 Q I actually have no other questions about  
17 that.

18 A I'm looking not at NLU Exhibit ISA-1, I'm  
19 looking at NLU Exhibit ISA-2 where the Contract  
20 Services Management changes from 3,300 to 7,000 for  
21 both water and for sewer for a total of 14 thousand.

22 Q So does that mean --

1           A     Quite frankly, when I realized that --

2           Q     Wait.  Wait.  Wait.

3           A     -- 550 --

4           Q     Excuse me.

5           A     -- wasn't called out for the agreement, I

6     thought it was time for a raise.

7           Q     Okay.  Well, my question was --

8           A     Oh, I'm sorry.

9           Q     My question was, did you think it was time

10    for a raise?

11          A     I do, indeed.

12          Q     So effectively by changing the 6,600 to

13    14,000, you've increased the amount due under the

14    Management Services Agreement; is that your

15    intention?

16          A     Yes.  I think the Commission should approve

17    an amount in that range for the management of the

18    utility.

19          Q     And that would -- management services

20    provided under the Management Services Agreement by

21    DAME Co.?

22          A     Whether it be through DAME Co. or whether

1     it be directly to me for the management services that  
2     I provide. I'm the one who provided the services and  
3     if, perhaps, it would be under the Management  
4     Services Agreement anything that the Utility can  
5     basically hire directly, it should hire directly and  
6     there certainly is nothing preventing the Utility  
7     from making an independent contract or arrangement  
8     with me or putting me on the pay role if we were to  
9     have employees subject to withholding but I think  
10    that the amount is the amount that I think is a fair  
11    amount to pay someone to do what I do for the  
12    Utility.

13           Q     Now, currently you don't receive any  
14    compensations as president of New Landing Utility?

15           A     No.

16           Q     And you have not received compensation as  
17    president of New Landing Utility since you became the  
18    president in 1984; is that correct?

19           A     I think that's correct. There might be a  
20    stray check some place, that's possible; but the  
21    correct statement is that, essentially, no  
22    compensation has been paid to me for management that

1 I provide to New Landing.

2 Q And DAME Company has served no compensation  
3 for their management services?

4 A Subject to the same qualification.

5 Q Okay. We would you agree with me that DAME  
6 Co. received a check of \$2,500 dated September 3rd,  
7 2003?

8 A Not without looking at it.

9 Q Okay. Let me show you what we've marked as  
10 AG Cross Exhibit 3.

11 (Whereupon, AG Cross  
12 Exhibit No. 3 was  
13 marked for identification  
14 as of this date.)

15 THE WITNESS: I have check No. 2143, a copy of  
16 it before me which is marked AG Cross Exhibit 3.

17 BY MS. SATTER:

18 Q Yes.

19 A What's your question?

20 Q Does that refresh your recollection that  
21 DAME Co. received a payment of \$2,500 on  
22 September 3rd, 2003 from New Landing Utility?

1           A     The check describes the payment that was  
2     made, which is toward interest due, not toward  
3     management services.

4           Q     So when New Landing Utility wrote DAME Co.  
5     this check, it was for something separate and apart  
6     from management services; is that correct?

7           A     Yes. It says right on its face, Forward  
8     installment due long-term debt.

9           Q     Okay. Thank you. Now, in your testimony,  
10    you point out that New Landing Utility has no  
11    employees; correct?

12          A     That's correct. All of the services are  
13    provided by independent contractors.

14          Q     And you hire the independent contractors to  
15    provide the functions that the Utility needs to  
16    operate; is that correct?

17          A     I contract -- I have New Landing Utility's  
18    contract with these people, they're not hired,  
19    they're independent contractors but I'm the one that  
20    makes the arrangements.

21          Q     And you currently have a certified operator  
22    for water service for New Landing Utility by the name

1 of Willard Rusty Cox?

2 A That's correct.

3 Q And New Landing has an agreement to pay him  
4 \$500 per month?

5 A That's the amount.

6 Q And is it correct that he handles matters  
7 concerning the entire water services provided by New  
8 Landing Utility?

9 A He is the certified operator in charge of  
10 New Landing Utility public water supply.

11 Q Does that include the New Landing for the  
12 Delta Queen Development?

13 A It does.

14 Q Does that includes the Lost Nation  
15 Development?

16 A It does.

17 Q Does that also include Knoll Wood, that's  
18 K-n-o-l-l, W-o-o-d, Knoll Wood Estates?

19 A It does.

20 Q And does it also include Flagg Estates?

21 A It does.

22 Q And that's Flagg with two g's.

1           A     It does.

2           Q     Do you recall whether the registration with  
3     the Illinois Environmental Protection Agency provides  
4     that Mr. Cox provides -- is the certified water  
5     operator for all of those areas?

6           A     I believe it does.

7           Q     Okay. And as the certified water operator,  
8     Mr. Cox is authorized to operate the water plant and  
9     conduct required testing; is that correct?

10          A     He does what certified operators do and  
11     that's pretty much outlined by the EPA. I don't tell  
12     him what to do, I tell him to be the certified  
13     operator and he's well experienced in performing the  
14     functions of a certified operator, he's head guy at  
15     Dixon, so he knows what he's doing.

16          Q     Do you know what those responsibilities  
17     are?

18          A     Some.

19          Q     But not all?

20          A     Perhaps not all.

21          Q     Would you agree with me that Mr. Cox is not  
22     authorized to incur expenses for the Utility?



1           A     No, I wouldn't agree with that.

2           Q     To what extent is he authorized --

3           A     What?

4           Q     To what extent is he authorized to incur  
5 expenses?

6           A     He's authorized to incur expenses within  
7 the range of reason to have what he needs in order to  
8 do the tasks that are required of him. He would  
9 certainly -- I am absolutely certain -- check with me  
10 before incurring a -- what might be considered a  
11 major experience; but he's authorized to incur  
12 expenses on behalf of the Utility.

13          Q     If there's a break in a line, is he  
14 authorized to incur the expense to repair that?

15          A     Would he be authorized to initiate the  
16 steps to get it repaired? I think he would feel that  
17 he was authorized; but I think that in the way we  
18 practiced in the past, he probably would first deal  
19 with the person who serves as our on site  
20 representative and between them, they would determine  
21 what course to follow which, in almost all cases,  
22 would be to get in touch with the Pfoutz Electric

1     which does substantial repair work on our water  
2     facilities.

3             Q     Would he also inform you?

4             A     I think that would depend on the nature of  
5     the problem that presented, what would be  
6     characterized.  As minor matters, I would learn  
7     about, I might not be informed ahead of time although  
8     I think I usually am.  If there were a major  
9     emergency-type break, there would be -- action would  
10    initiated immediately whether they can reach me or  
11    not.

12            Q     Okay.  Does Mr. Cox have access to a  
13    checkbook to pay expenses?

14            A     Not directly.  I mean, if he were to incur  
15    experiences on his own behalf, they would be  
16    reimbursed.  He is not authorized to sign any check  
17    that is a Utility check.

18            Q     Now, would you agree with me that New  
19    Landing Utility has consistently paid Mr. Cox late?

20            A     It's not uncommon for us to be in arrears  
21    on payments to Mr. Cox.

22            Q     And you would agree with me that as of

1 February 26th of this year, New Landing had not paid  
2 Mr. Cox since October of 2004 and there was an amount  
3 outstanding of \$2,500?

4 A No, I wouldn't agree with that. I would  
5 agree that there was an amount that was due, I don't  
6 think it was -- I think the 2,500 included all the  
7 way through March.

8 Q Has he been paid?

9 A Yes, he has.

10 Q When did you pay him?

11 A In the middle of last month.

12 Q And are you aware that he prepared an  
13 affidavit that he was prepared to resign if he was  
14 not paid by the end of February?

15 A I saw the affidavit.

16 Q So you would agree with me that he did make  
17 that statement?

18 A I saw the affidavit. I don't know whether  
19 he made the statement or not, it looked like his  
20 signature, but I saw the affidavit and I know that  
21 Mr. Cox was expecting to get paid and was at a point  
22 where he wondered whether he should stop providing a

1 service and I had a talk with him, he understood very  
2 well the circumstances the Utility is in and I made  
3 sure he got paid.

4 Q Okay. Let me show you what we've marked as  
5 AG Cross Exhibit 4 and you can tell me if that is the  
6 affidavit that you recall seeing.

7 (Whereupon, AG Cross  
8 Exhibit No. 4 was  
9 marked for identification  
10 as of this date.)

11 THE WITNESS: It is.

12 BY MS. SATTER:

13 Q You testified that in the middle of March  
14 you paid him the \$2,500; is that correct?

15 A I paid him recently and I think middle of  
16 March is the correct time frame.

17 Q And was it \$2,500?

18 A It was.

19 Q Now, you have also hired a certified  
20 operator for your sewer services; is that correct?

21 A That's correct.

22 Q And that person's name is Gregory

1 Shosinski, that's S- --

2 A No.

3 Q No?

4 A Scott Schulte. S-t-e-c-h-e- -- S-t-e-c-h-  
5 S-c-h-u-l-t-e, Scott Schulte, the last letter is an  
6 e, not a z.

7 Q Okay. Thank you. And New Landing Utility  
8 compensates him at the rate of \$1,000 a months?

9 A No, we paid him more.

10 Q How much do you pay him now?

11 A We have agreed to stage increases in the  
12 amount of his monthly compensation and subject to  
13 check, I would say we're probably in the 13 or \$1,400  
14 per month range at this point. There was a time we  
15 paid him less and we have agreed to stage a series of  
16 increases.

17 Q When did you agree to that?

18 A I would say last fall.

19 Q And does he provide service for all your  
20 sewer operations?

21 A He is the certified operator of the New  
22 Landing Utility sewer systems.

1           Q     Of the four developments that New Landing  
2     serves; that is, Lost Nation, New Landing, Knoll Wood  
3     Estates and Flagg Estates, which of those have sewer  
4     service provided by New Landing Utility?

5           A     First of all, there are more subdivisions;  
6     but the one subdivision that does not receive sewer  
7     service is, broadly speaking, Lost Nation although  
8     there are some portions of Lost Nation that are  
9     connected to the sewer system, specifically, Section  
10    9 and there may be some tail ends of other sections  
11    of Lost Nation that have arranged to have sewage  
12    lines, collection lines extended to serve them.

13          Q     So New Landing Utility is authorized to  
14    provide sewer service to the Lost Nation areas; is  
15    that correct?

16          A     The lost Nation subdivision is included in  
17    our service territory.

18          Q     And your certified operator is authorized  
19    to operate the plant and do the required EPA testing;  
20    is that correct?

21          A     I'm sorry?

22          Q     Your sewer operator is authorized to

1     operate the sewer plant and to do the required EPA  
2     testing; is that correct?

3             A     I believe he does that, yes.

4             Q     And is he authorized -- strike that.

5                     Does he -- is he authorized to write  
6     check on behalf of New Landing Utility?

7             A     He has no authority to write -- he has no  
8     authority to sign a New Landing check.

9             Q     Does he have authority to incur expenses?

10            A     Yes.

11            Q     And can you just describe the expenses that  
12   he's authorized to incur?

13            A     As he needs -- whatever he needs in order  
14   to operate, he makes arrangements for it to be  
15   obtained and the bills come to New Landing to my  
16   attention and I deal with them.

17            Q     So that would be the ordinary expenses --  
18   ordinary day-to-day expenses?

19            A     Well, I think it would be somewhat broader  
20   than that; but that would be certainly included in --  
21   and much of that he would do with no particular input  
22   from me. He might bring to my attention that he's

1     going to do something but often just goes ahead and  
2     does it and I see the bill and I understand what has  
3     happened and I deal with it.

4           Q     Is there a dollar amount that you would  
5     consider a ceiling for the expense he can incur?

6           A     We have not set a dollar amount but it is  
7     my experience that Mr. Schulte and all of the people  
8     who have served as certified operators have good  
9     judgment and do what they can not to create any  
10    unnecessary or -- avoid surprises. I mean, they try  
11    to keep me informed.

12          Q     So you don't have a dollar amount?

13          A     No dollar amount.

14          Q     What be repairs, is he authorized to order  
15    repairs to the sewer plant?

16          A     You know, it's never come up in that  
17    context. I don't know whether he would feel that --  
18    I don't know what he would feel would be the extent  
19    of his authority. I think that if there an  
20    emergency, that he would try to deal with it whether  
21    he could reach me or not, I don't think there's any  
22    question about that, but we don't have any operating



1 rule about that.

2 Q It's more casual?

3 A It's judgmental and I think he has good  
4 judgment.

5 Q Now, you have also hired an on site manager  
6 for New Landing Utility?

7 A We've had an on site manager over the  
8 years, yes.

9 Q And in about 1999 did the Utility retain  
10 Steve Clark?

11 A Steve Clark succeeded Don Finch in -- I  
12 can't remember the exact year but he's been on site  
13 manager for a number of years.

14 Q Now, he does not have an office on site; is  
15 that correct?

16 A The Utility does not have an office for him  
17 on site. I think he maintains a -- probably what  
18 would be characterized as a home office, a place  
19 where he can keep records that he needs to keep with  
20 respect to the Utility and have access to them where  
21 he needs them.

22 Q And he uses his personal telephone number

1 as a contact; is that correct?

2 A I am quite sure he does.

3 Q And he handles both water and sewer  
4 matters?

5 A Yes, he does.

6 Q And he has a job as a paramedic in Ogle  
7 County; is that correct?

8 A He presently is an emergency medical  
9 technician I think with Superior Ambulance which is a  
10 large ambulance service company my understanding is  
11 is that his base of operations is Rockford; but I'm  
12 sure that -- I don't know where the ambulance leaves  
13 from but he does serve as an EMT.

14 Q Okay. So he does the on site management in  
15 addition to his other jobs?

16 A All of these people have full-time jobs in  
17 addition to the work they do for New Landing Utility.

18 Q Mr. Cox has a full-time job with the City  
19 of Dixon; is that correct?

20 A Mr. Cox is the principal water operator, I  
21 suppose, head of the water department or something  
22 close to that in the City of Dixon, Illinois.

1 Mr. Scott Schulte is with the waste water department  
2 in Rochelle, Illinois.

3 Q So they perform their functions in the  
4 evenings and weekends; is that correct?

5 A I don't know what the days -- I don't know  
6 the times of day when they go to the plant. It would  
7 strike me as -- they would probably go to New Landing  
8 at times other than when they were working for their  
9 employer, although they may have more flexibility  
10 than I might think and they might be able to respond  
11 at any hour, they seem to be able to respond at any  
12 hour.

13 Q And do you pay Mr. Clark \$1,000 a month for  
14 his services?

15 A That is correct.

16 Q And that includes both water and sewer?

17 A He is involved in both you utility  
18 operations.

19 Q Now, is it true that Steve Clark resigned  
20 as of March 7th this year?

21 A Steve would like to be relieved of his  
22 further duties as the on site manager. He's willing

1 to continue providing some assistance to the Utility;  
2 but he would like to be relieved of his  
3 responsibilities. The full extent of his  
4 responsibilities that has -- he has provided in the  
5 past and I'm doing everything I can to accommodate  
6 him and he's aware that these matters are taking an  
7 awful lot of my time and is patient with me in my  
8 effort to make alternative arrangements.

9 Q Do you know whether he had asked to  
10 resign --

11 A Pardon.

12 Q Has he asked to resign due to financial  
13 reasons?

14 A He did not explain to me -- well, I think  
15 that the closest -- the best I can answer I can give  
16 you without speaking for Steve is that he's tapped  
17 out.

18 Q Okay. Thank you. Let me go back to AG  
19 Cross Exhibit 4. Can you tell me, do you recognize  
20 this as the affidavit of Willard Rusty Cox?

21 A As I say, this looks like the affidavit  
22 that I've seen before.

1           Q     Okay.  Thank you.  And --

2           A     It's not properly sealed but it's certainly  
3     his signature and I don't have any dispute with the  
4     information that he's provided.

5           Q     Thank you.  Now, is it correct that the  
6     telephone number for New Landing Utility is an Oak  
7     park telephone number?

8           A     There is an Oak Park telephone number on  
9     the bills.

10          Q     And --

11          A     And it is a New Landing cell phone.

12          Q     And that rings at an answering machine in  
13     your home; is that correct?

14          A     No.

15          Q     Where does it will ring at?

16          A     It rings at my office desk.  It passes  
17     through a voice mail system.  There was a time when  
18     it rang in my home.

19          Q     Did you make that change after January of  
20     last year?

21          A     After January of '04?

22          Q     Yes.

1           A     I think that would be correct.

2           Q     Now, is it correct that your law office;  
3     that is, Gene L. Armstrong & Associates is also a  
4     contractor with New Landing Utility?

5           A     Is also what?

6           Q     A contractor. In other words, provides --

7           A     The law firm has provided legal services to  
8     New Landing Utility.

9           Q     And you, as an individual, as an attorney  
10    provides those services to New Landing Utility  
11    through your law firm; is that correct?

12          A     I did and I think I provided certainly  
13    the -- virtually all of them. There have been others  
14    who have provided some -- done some legal work for  
15    New Landing Utility; but for the most part, I'm the  
16    one who provides the legal services for New Landing  
17    Utility.

18          Q     Are there other attorneys in your firm?

19          A     Yes, there are.

20          Q     How many?

21          A     Let me put it to you this way: As of  
22    January 1st, the attorney who was one of our active

1 participating principal attorneys has begun to do  
2 legal work in his own name. He is still of counsel  
3 to our firm, so that's a change. In prior years we  
4 had up to 10 attorneys.

5 Q Going back to 2003 -- January of 2003, how  
6 many attorneys were employed by your firm?

7 A Two.

8 Q That would be yourself and this other man?

9 A Myself and Jon Duncan.

10 Q Now, you have been providing legal services  
11 to New Landing Utility since you became president in  
12 1984; correct?

13 A My legal services of New Landing Utility  
14 predate that but I have provided legal services to  
15 New Landing in the time after June of 1984.

16 Q Okay. I would like to show you an exhibit  
17 we are marking as AG Cross Exhibit No. 5.

18 (Whereupon, AG Cross  
19 Exhibit No. 5 was  
20 marked for identification  
21 as of this date.)

22 BY MS. SATTER:

1           Q     Would you take a minute to go through this.  
2     It's a 9-page exhibit containing 9 checks on the  
3     account of New Landing Utility, Inc., payable to Gene  
4     L. Armstrong & Associates. Can you go through that  
5     and tell me whether you recognize those checks as --

6           A     I recognize the checks.

7           Q     And do these checks represent payment from  
8     New Landing Utility to your law firm?

9           A     They do.

10          Q     Do you recall whether there are any  
11     additional checks or any additional payments that  
12     were made to New Landing -- excuse me, that were made  
13     to Gene L. Armstrong & Associates in 2003?

14          A     Subject to check, there are several checks  
15     in this exhibit, AG Cross Exhibit 5, that are written  
16     in 2003. I made all of the 2003 records available,  
17     so my assumption is that whoever pulled these to copy  
18     picked all of the ones that were written to the law  
19     firm, it looks like it's about right.

20          Q     Is it true that there were additional  
21     payments for expenses?

22          A     That's possible because we were involved in



1 a defensive EPA suit filed in Ogle County. In 2003  
2 we did a ton of work in defense against the claims  
3 asserted in that suit.

4 Q So were those expenses put on the charge  
5 card by and large or were you paid separately?

6 A The law firm has no charge cards.

7 Q Okay. So the expenses that were paid, in  
8 addition to these were paid directly to you?

9 A The answer to your question is this: To  
10 the extent the law firm incurred expenses in  
11 providing the legal services in defense against the  
12 EPA claim for any of the other matters -- and there  
13 are other matters that are detailed here -- if the  
14 bills that the law firm submitted included expenses,  
15 those expense would be detailed and itemized  
16 separately and would be a part of the total amount  
17 owed to the law firm. So some amounts of these  
18 payments when they're payment on account may vary  
19 well -- in fact, I suspect would probably apply to  
20 one of these Company expenses before we applied the  
21 money to our legal fees, but I don't know for sure  
22 about that.

1           Q     So are you saying there are separate checks  
2     or there are not?

3           A     I don't suspect there are. I think that if  
4     the amounts were payable -- if the expenses were part  
5     of the bill submitted by the law firm, they would be  
6     a part of the bill submitted by the law firm; and to  
7     the extent these checks are in payment of the bills  
8     submitted by the law firm, therefore, legal fees and  
9     expenses incurred as reflected on those bills.

10          Q     So is it the -- if New Landing Utility paid  
11     credit card expenses, those credit card expenses  
12     would have been incurred by you personally; is that  
13     correct?

14          A     They would have been on my credit card, not  
15     the law firm credit card, the law firm has no credit  
16     cards.

17          Q     Okay. Now, you said that you have been --  
18     your law firm has been providing services to New  
19     Landing Utility at least since you became president  
20     of the Utility?

21          A     Yes, we have.

22          Q     And is it correct that New Landing Utility

1 does not have a written agreement with your law firm?

2 A For -- until last year, the arrangement was  
3 not memorialized in writing.

4 Q And New Landing Utility never sought  
5 approval of that relationship by the Illinois  
6 Commerce Commission?

7 A That's correct until last year.

8 Q Now, is it also correct in a New Landing  
9 Utility has paid rent to Gene L. Armstrong &  
10 Associates?

11 A It has.

12 Q And New Landing Utility has also paid rent  
13 to an organization called Cam, C-a-m --

14 A Properties.

15 Q -- is that correct?

16 A Cam Properties, yes.

17 Q Cam Properties?

18 And you are a majority -- you have a  
19 majority interest in Cam Properties?

20 A I am the majority partner in Cam  
21 Properties. Cam Properties owns the building where  
22 my law firm and the Utility now maintain offices.

1           Q     And what is the size of your majority  
2     interest?

3           A     I'm sorry?

4           Q     What is the size of your majority interest?

5           A     It's a majority interest.

6           Q     51 percent?

7           A     It's a majority interest.

8           Q     Does that mean you don't know what --

9           A     I do know but I don't think it's quite  
10    frankly any of your business.

11          Q     Well, if there's a motion pending, you  
12    know -- an objection, but there is no objection so I  
13    don't think that -- I would like the ALJ to direct  
14    him to answer the question.

15          MS. MURAN FELTON:   The Company would object to  
16    the fact that it's not relevant to the line of  
17    questioning.

18          JUDGE BRODSKY:   Response?

19          MS. SATTER:   It's relevant to whether or not  
20    this is -- to the extent of the affiliated interest  
21    and the payments that are going from the president to  
22    this organization whether there's an identity

1 interest.

2 MS. MURAN FELTON: But the affiliated case is  
3 being tried --

4 THE WITNESS: Let me answer the question. The  
5 answer to your question is I have a two-thirds  
6 interest. I have one partner. His name is Craig  
7 Rumel (phonetic). He also has offices in the  
8 building.

9 BY MS. SATTER:

10 Q Thank you. Now, you did not seek  
11 Commission approval for payments to Cam Properties  
12 for rent; did you?

13 A No.

14 Q And you did not do that in Docket 04-0666  
15 either; correct or did you -- I'll withdraw the  
16 question.

17 A I'm not sure. It's possible that we  
18 didn't, the amounts are so small, it is considered to  
19 be a waste of my time.

20 Q Now, would you agree with me that the  
21 amounts paid to Cam Properties in -- excuse me, let  
22 me restate that.

1                   Would you agree with me that the  
2   amounts New Landing Utility paid to Cam Properties  
3   on -- by check dated February 27th, 2004 was \$1,800?

4           A     It did.

5           Q     And was that for the January through June  
6   rent?

7           A     Yes.

8           Q     So that was a little prepaid rent there?

9           A     It was -- some of it was prepaid.

10          Q     And would you also agree with me that Cam  
11   Properties received a check from New Landing Utility  
12   dated November 26th, 2003 for \$3,600?

13          A     Yes. And that was for the year 2003, it  
14   was paid predominantly in arrears.

15          Q     Now, New Landing Utility has also hired a  
16   person by the name Ann Armstrong to do bookkeeping  
17   for New Landing Utility; is that correct?

18          A     That's not correct.

19          Q     For what?

20          A     The Utility has not hired anybody. Ann  
21   Armstrong did, from time to time, provide bill  
22   payment, bill processing, customer account

1 maintenance type services for New Landing Utility as  
2 an independent contractor. We issued a 1099  
3 miscellaneous to her for the services that she  
4 rendered.

5 Q So she was retained as an independent  
6 contractor to do those services?

7 A She was not an employee, she was an  
8 independent contractor.

9 Q And she does not do bookkeeping for any  
10 other business, does she?

11 A That's kind of an interesting way to look  
12 at it. I'd say that my wife is -- her employment is  
13 as development director for the Metropolitan Planning  
14 Council. She is in charge of raising money and  
15 keeping track of the money for a 75-year old urban  
16 planning think tank, an advocacy see group. Her  
17 budgets on an annual basis exceed several millions  
18 dollars. They were awarded the Mccarthy Genius Grant  
19 to an organization. She knows a lot about money.

20 Q Excuse me.

21 A She does not provide accounting service to  
22 New Landing.

1 Q She does not provide accounting services?

2 A She does not provide accounting service for  
3 New Landing but she knows a lot about money.

4 Q And she does not provide accounting  
5 services as an independent contractor for any other  
6 entity; correct?

7 A That would certainly be correct.

8 Q Now, you would agree with me that from  
9 January 1st, 2000 through December 6th, 2004 she was  
10 paid \$13,000 as itemized on --

11 A During what time frame?

12 Q January 1st, 2000 through December 6th,  
13 2004 and that is itemized on NLU's response to AG  
14 data request 4.7.

15 A She was paid for each month that she  
16 provided such services and during that time frame.  
17 If the amounts were paid, they were for the months  
18 that she provided the service.

19 Q Would it refresh your recollection to see  
20 the response to the data request?

21 A If you want to show it to me, I'll be glad  
22 to see it.



1           Q     We'll show you a document that's been  
2     marked as AG Cross Exhibit 6, it's the Company's  
3     response to AG data request 4.7.

4                     (Whereupon, AG Cross  
5                     Exhibit No. 6 was  
6                     marked for identification  
7                     as of this date.)

8     BY MS. SATTER:

9           Q     And does the response to in data request  
10    indicate that Ann Armstrong was paid a total of  
11    \$13,000 for the period January 1, 2000 through  
12    December 6th, 2004?

13          A     She was paid 6,500 in 2000, that would have  
14    been seven months. In 2001 she was paid 5,500, that  
15    would have been five months. In 2002, she was paid  
16    1,000, that would be two months and that totals  
17    13,000.

18          Q     And she received an additional amount of  
19    \$3,000 for storage in the residence; is that  
20    indicated as well on this response?

21          A     That's not what it says. She was paid rent  
22    for use of her residence, which at the time the

1     Utility used -- for many years the Utility used as  
2     its business office and continues to store records in  
3     her residence.

4             Q     So in the year 2000, she was paid \$500 a  
5     month for six months; is that correct, for that  
6     service?

7             A     In the year 2000 she was paid 6,500 for the  
8     services she provided in the operations of the  
9     Utility and she was paid 3,000 for rent.

10            Q     Okay. Thank you.

11                         And New Landing Utility did not  
12     request approval from the Illinois Commerce  
13     Commission for entering into this contract with Ann  
14     Armstrong; is that correct?

15            A     It's not required to.

16            Q     Did you request it? I'm not asking whether  
17     it was required, I'm just asking whether you  
18     requested it?

19            A     We certainly did not request it.

20            Q     Okay. Thank you.

21                         New Landing Utility also retained the  
22     services of a Mathew Armstrong as an independent

1 contractor; is that correct?

2 A That's correct.

3 Q And he also did bookkeeping for New Landing  
4 Utility; is that correct?

5 A He provided a variety of services including  
6 of helping with billing, processing of payments,  
7 customer record maintenance, answering response --  
8 responses to inquires, responses to inquires from  
9 realtors and other matters relating to the billing  
10 and collection customer account functions of the  
11 Utility and any other special projects that I needed  
12 his help on.

13 Q And Matthew Armstrong is your son; correct?

14 A He is my son.

15 Q And do you have a written agreement with  
16 him?

17 A No.

18 Q And you never saw the Commission sought  
19 Commission approval to enter into this agreement with  
20 him, did you?

21 A Not only did I not, I did not need to.

22 MS. SATTER: I'll move to strike the response,

1 did not need to, that that's a legal conclusion?

2 MS. MURAN FELTON: I would just object to the  
3 line of questioning again because this relates to the  
4 affiliated interest which is not before us on this  
5 docket and it is not required under the Public  
6 Utilities Act.

7 JUDGE BRODSKY: The motion to strike is  
8 sustained. The objection is to the affiliated  
9 interest, although approval is the subject matter of  
10 Docket 04-0666, whether or not rates may include such  
11 amounts as proper within the rate case, so that  
12 objection is overruled.

13 BY MS. SATTER:

14 Q Can you tell us what Matthew Armstrong's  
15 educational background is?

16 A Sure. I'd be glad to. My son graduated  
17 with honors from Oak Park River Forest High School.  
18 He enrolled at the University of Michigan, qualified  
19 for three degrees and graduated Phi Beta Kappa. He  
20 then went to Harvard University and got a master's  
21 degree in education.

22 Q Does he have employment -- is he employed?

1           A     Yes, he is employed.

2           Q     And where is he employed?

3           A     At the present time -- well, his employment  
4 history is fairly easy. When he finished at Harvard  
5 he was hired in the English Department at Lake Forest  
6 High School, he taught there for two years, saved a  
7 lot of money, went off to try to get a writing career  
8 started and have more experiences in life and last  
9 fall went back to teaching, is currently teaching  
10 high school in California.

11          Q     So he's currently in California?

12          A     He is.

13          Q     When did he leave for California?

14          A     September of last year.

15          Q     That would be September of 2004?

16          A     Yes.

17          Q     Now, would you agree with me that New  
18 Landing Utility paid Matthew \$500 each month from  
19 January through August 2004?

20          A     Yes, we did.

21          Q     And that is inclusive -- including January  
22 and including August; correct?

1           A     I believe we paid him for the eight months  
2     that he worked in 2004.

3           Q     Have you paid him anything in 2005?

4           A     No, he's done no work in 2005.

5           Q     And in 2003; is it correct that you paid  
6     Matthew \$6,250 in accordance with his 1099?

7           A     It sounds right.

8           Q     Before Matthew went to California, where  
9     did he live?

10          A     He lived on --

11          Q     What city?

12          A     He lived in Chicago.

13          Q     Okay. Thank you.

14                     Now, going back to -- as your role as  
15     president of New Landing Utility, is it correct that  
16     you decide when New Landing's billings will be paid?

17          A     I make that decision.

18          Q     Would you agree that New Landing Utility  
19     often does not pay its bills for up to six months?

20          A     I'm sure there are times when cash flow  
21     prevents us from paying bills before six months have  
22     lapsed?

1           Q     Do you consider New Landing a slow pay?

2           A     I guess that's a judgment. I'm sure there  
3     are some who think New Landing are slow pay;  
4     others --

5           Q     Okay. Thank you.

6           A     -- are willing to accommodate us.

7           Q     Is it also correct that you decide what  
8     investments are necessary in the Utility?

9           A     What the what?

10          Q     What investments are necessary.

11          A     What investments?

12          Q     Yes.

13          A     Are you talking about stock investments?

14          Q     Client investment.

15          A     Client investment, I'm involved in those  
16     decisions but the -- I rely upon the advice of the  
17     operators and consultants; but they have no authority  
18     to invest on behalf of the Utility in the sense of  
19     the word you're using.

20          Q     So you make that decision?

21          A     I make that -- I do make that decision.

22          Q     And do you also make the decision when a

1 plant investment is appropriate?

2 A No, I don't decide whether it's  
3 appropriate, but I do have something to say about  
4 when it's affordable.

5 Q Who decides what plant investment is  
6 appropriate?

7 A I don't know whether appropriate has ever  
8 come up. The operators will, from time to time, tell  
9 me what they feel is needed and the engineers will  
10 from time to time tell me what they feel would be an  
11 appropriate improvement.

12 Q And then you decide whether or not it will  
13 be made?

14 A I decide whether or not we can afford it.  
15 It won't be made if we can't afford it. I mean,  
16 that's the way it works.

17 Q What other considerations do you have when  
18 you're deciding whether an investment in a plant  
19 should be made, considerations other than  
20 affordability?

21 A Well, affordability, like, for New Landing  
22 like every other business is also an issue; but



1     unlike some businesses, New Landing sometimes has to  
2     go forward with improvements or repairs on a  
3     timetable that the facts and circumstances dictate  
4     whether it has money in checkbooks sufficient to  
5     write check and payment of the bill by return mail or  
6     not, sometimes that would go forward and rely upon  
7     the willingness of our suppliers to be patient.

8           Q     So you consider whether or not the -- that  
9     vendor will accept a late payment; is that what  
10    you're saying?

11          A     I wouldn't put it that way, no.

12          Q     Okay. Do you consider whether financing is  
13    available to the Utility?

14          A     I do.

15          Q     Do you recognize that New Landing Utility  
16    has an obligation to serve all residents of the New  
17    Landing certificated service territory?

18          A     I wouldn't put it that way.

19          Q     How would you put it?

20          A     I would say we have an obligation to serve  
21    everybody who is receiving our water and sewer  
22    service. Our service territory includes residents

1       who are not connect the to our systems.

2               Q     What if somebody wants to become connected  
3       to your system?

4               A     They can.

5               Q     And then do you have an obligation to  
6       provide them service?

7               A     Under most circumstances, we would have --  
8       make arrangements for them to get hook up.

9               Q     There's no other water company that can  
10      serve them in your service territory; isn't that  
11      corrects?

12              A     Not that I'm aware of.

13              Q     And there's no other sewer company that can  
14      serve them in your service territory?

15              A     Company, no; capability, there are -- the  
16      option of septic is available in Lost Nation. I  
17      think some parts -- most parts of Lost Nation.

18              Q     So apart from having your own septic  
19      system, there's no other company available?

20              A     I know of no other company providing sewage  
21      disposal service in our territory?

22              Q     Are you familiar with an individual by the

1 name of Josh Lewis?

2 A Josh Lewis?

3 Q Do you recall him requesting --

4 A I recall the name.

5 Q Do you recall him requesting a hookup to

6 your water system?

7 A I think he did.

8 Q Do you recall whether that was in November

9 of 2004?

10 A It sounds like a recent experience.

11 Q And would you agree with me that he was

12 connected in February of 2005?

13 A I do believe he was connected, the sequence

14 of when he asked and when he got connected, we

15 usually work with people -- most frequently these are

16 people who are in the process of building and we try

17 to coordinate with them to try to get them connected.

18 Q Are you familiar with James and Melissa

19 Smith?

20 A Who.

21 Q James and Melissa Smith at 412 Sioux Lane?

22 A As I sit here, it doesn't ring a bell.

1           Q     Now, in order to hookup a new customer,  
2     what do you -- do you request Pfoutz Electric to  
3     provide the service? And that's -- Pfoutz is  
4     P-f-o-u-t-z.

5           A     They do virtually all of our work on  
6     hookups.

7           Q     Are you aware of the fact that as of  
8     February 26th, 2005 Pfoutz Electric submitted an  
9     affidavit that they would do no further work for New  
10    Landing Utility until they were paid the amounts  
11    owed?

12          A     I know there was an affidavit, I don't  
13    remember exactly what the phraseology was. I have  
14    some issue with of the affidavit.

15          Q     I'm sorry?

16          A     I know I have some disagreement with the  
17    affidavit.

18          Q     Let me show you what's been marked as AG  
19    Cross Exhibit No. 7.

20                         (Whereupon, AG Cross  
21                         Exhibit No. 7 was  
22                         marked for identification

1 as of this date.)

2 BY MS. SATTER:

3 Q Do you recognize this affidavit as a  
4 document that's presented to the Ogle County Court on  
5 February 28th, 2005?

6 A I saw the affidavit, I'm not sure it was  
7 presented to the Court.

8 Q Okay. But you did see the affidavit at  
9 that time?

10 A I saw it when I was in Court and I think I  
11 was in Court on February 28th.

12 Q And is it true that you stipulated to this  
13 affidavit?

14 A No, I did not.

15 Q Was there -- were there changes to the  
16 affidavit that -- were there things in the affidavit  
17 that caused you concern?

18 A There were a couple of things that caused  
19 me concern. One was the statement in paragraph  
20 No. 6.

21 Q And you felt that the Has refused to pay  
22 was not appropriate; is that correct?

1           A     It would be incorrect to pay that we've  
2     refused to pay Pfoutz.

3           Q     But is it correct that \$26,730.14 was  
4     outstanding as of February 26th, 2005?

5           A     I cannot confirm that number but we do owe  
6     Pfoutz a significant balance for all the work that  
7     they did to -- among other things, seal the old Lost  
8     Nation wells, put hydrants on new Lost Nation lines  
9     including -- the one thing -- one of the principal  
10    things I took issue with respect to this affidavit is  
11    whoever did it was either trying to create the  
12    impression that it was a huge, humongous problem of  
13    indescribable proportions because they doubled up and  
14    counted -- they put the same invoices on here. For  
15    example, we've got invoice 8565 attached to this  
16    affidavit three times. Yes, Pfoutz did the work  
17    described for the Utility, but either there was an  
18    improper purpose or sloppy work in putting together  
19    this affidavit. There's no question we owe Pfoutz  
20    money.

21          Q     So that's to say there's double counting in  
22    this exhibit; is that what you're saying?

1           A     Not necessarily double counting but they're  
2     certainly duplications in the attachments.

3           Q     Okay. Thank you. Now, can you tell me how  
4     you account for the costs associated with hooking up  
5     customers?

6           A     We try to log back in to account -- there  
7     are two assets accounts and I thought I would be able  
8     to find an exhibit where they're detailed and maybe I  
9     can, there are two assets accounts. One is services  
10    to customer's water and the other is services to  
11    customer's sewer and we tried to reflect in those two  
12    accounts the amounts we pay for the hookup.

13          Q     Now, can you tell -- turning to the sewer  
14    plant, can you tell me what experience you have in  
15    operating a sewage treatment plant?

16          A     I have no direct experience in operating  
17    sewage treatment plant. All my experience would be  
18    by what I read and what I learn from a my dealings  
19    with engineers and the operators.

20          Q     Now, you say in your testimony that you  
21    were advised that the aeration system does not work?

22          A     I am -- that is my understanding, that we

1     need to replace the system of types and lines that  
2     put fresh air into the tanks that are in the sewage  
3     treatment plant. One way to do that on a long-term  
4     basis is to replace those pipes.

5           Q     Do you remember when you were advised of  
6     this project?

7           A     I've been aware of that for a period of  
8     time, several months for sure.

9           Q     Several?

10          A     I also try to think of several ways to  
11     approach it.

12          Q     You said you've been aware of it for  
13     several months?

14          A     Yes.

15          Q     Were you aware of it for more than a year?

16          A     Probably. I think I put in my testimony  
17     that the Utility needs a rate increase in order to be  
18     able to afford to make repairs to the plant which  
19     would include the aeration system.

20          Q     So you don't really recall when you first  
21     became aware of this problem?

22          A     I guess I would say I could sense and see



1     that it was coming because I was getting reports from  
2     the operators that these lines were pretty old.

3           Q     Do you know whether the aeration system  
4     treats sewage to control the odor associated with  
5     sewage?

6           A     I don't know that I can say I know that it  
7     has a direct impact on odor but my understanding is  
8     that the -- essentially the micro -- the bugs that  
9     eat the sewage needs air and if they don't have air,  
10    they start to eat themselves and you have to -- we  
11    need to figure out ways for them to -- for there to  
12    be more air in the system. The system can't be  
13    operated in the manner in which it was designed  
14    because there are a lot of people connected to it and  
15    we are trying to jerry-rig solutions to account for  
16    the fact that you can't operate the sewage plant in  
17    the manner for which it was designed.

18          Q     I'm sorry, when you spoke you said there  
19    aren't enough something connected to it?

20          A     Customers. This plant is designed to, I  
21    think, serve a population equivalent of 410,000  
22    people, we've got 160 homes.

1           Q     So you're saying that the problems are a  
2     result of small number of customers?

3           A     I'm saying that the small number of  
4     customers leads to operational modifications that we  
5     have to make and you can't operate the plant in the  
6     manner in which it was designed. We operate it on  
7     that and that's because which don't have enough  
8     customers hooked to it.

9           Q     How often do you visit the sewer plant?

10          A     How what?

11          Q     How often do you visit the sewer plant?

12          A     I'm out there -- almost ever time I go out,  
13     I look at both the water facilities at the top of  
14     Timber Trail and the sewage plant, so a couple of  
15     times a year, sometimes more often. If I'm out there  
16     more often, I look more often.

17          Q     On average a couple times a year?

18          A     Probably more than a couple times a year  
19     but I'm not out there every month.

20          Q     When was the last time you were there?

21          A     When was the last time I was in the sewer  
22     plant? Earlier this year.

1 Q January?

2 A Pardon?

3 Q January?

4 A If not January, then early February, that's  
5 my recollection.

6 Q Do you know whether a properly functioning  
7 sewer plant should have an odor?

8 A I don't know that I can answer the question  
9 about a properly functioning sewer plant. I would  
10 hope that we would be able to operate our plant so it  
11 would not create odors that would be problematic.

12 Q So you don't know whether a properly  
13 operated sewer plant would have an odor?

14 A I don't know whether a properly operated  
15 sewer plant would have an odor. I do know that when  
16 I drive by a lot of sewer plants, I detect an odor.  
17 Whether they're property properly functioning or not,  
18 I don't know. As I say, to the extent our plant can  
19 be operated so as to create no odor or a minimum  
20 odor, that would certainly be our objective.

21 Q Now, would you agree with me that there is  
22 an odor from the sewer plant?

1           A     If you're in the building, I -- when I'm in  
2     the building, I detect an odor that I would  
3     characterize as a combination of a highly humid  
4     environment in a place where sewage is being  
5     processed.

6           Q     Would it be fair to say it stinks?

7           A     It has an odor that I don't find to be a  
8     pleasant odor.  What I say -- would it be fair to say  
9     it stinks?  You would not want to live in a sewer  
10    plant and you would not want to live in this sewer  
11    plant.

12          Q     Fair enough.

13          A     And part of the reason you do not want to  
14    live there is because you wouldn't like the odor.

15          Q     Has your operator brought this problem to  
16    your attention?

17          A     I don't recall whether the operator has  
18    characterized the operation as causing an odor  
19    problem; but the operator has brought to my attention  
20    the need for additional aeration and the other things  
21    we've been talking about.  I don't recall any of the  
22    operators saying anything specifically related to

1 odor.

2 Q So would you agree that the odor is a  
3 result of a plant that's not functioning properly?

4 A I can't say that.

5 Q Okay. Are you familiar with the Spencer  
6 family at 713 Cascasada Drive (phonetic)?

7 A Which family?

8 Q Spencer.

9 A Spencer?

10 Q Robert and Connie Spencer?

11 A I see the customer list all the time so I  
12 am aware that we have -- Spencer -- Robert Spencer is  
13 a name I recognize.

14 Q Do you know where that home, 713 Cascasada  
15 Drive is relative to the sewer plant?

16 A I think it's near by.

17 Q You haven't had any communications with  
18 them other than billing?

19 A Other than what?

20 Q Billing.

21 A I don't recall that.

22 Q Would you agree with me that the sewer

1 plant is more than 30 years old?

2 A I think the sewer plant went in in the  
3 mid-'70s.

4 Q Okay. And --

5 A I don't think it was -- I think by the time  
6 the Utility got it's initial rates approved, there  
7 were -- there may have been fewer than 10 people  
8 hooked up to the sewer plant.

9 Q Do you recall whether there was a flood of  
10 the sewer plant at some point?

11 A I don't recall that. I've been told that  
12 it happened, but I have no recollection.

13 Q Are you aware of any damage to the sewer  
14 plant?

15 A Damage.

16 Q Damage?

17 A We had roof damage some years ago that we  
18 had to repair and -- it's an industrial-type  
19 building, I'm sure there have been occasions when  
20 damage has occurred. I don't have any specific  
21 recollection of any incidents where someone said, Oh,  
22 the sewage plant was damaged in this regard on this

1 day. I do remember the roof problem because I had to  
2 make arrangements to get it fixed.

3 Q Did you ever make any insurance claims for  
4 damage to your sewer plant?

5 A I don't recall doing so and I think if it  
6 had been claimed, I would have been involved.

7 Q And you do have insurance on your property?

8 A The facilities are insured.

9 Q Now, you said previously that there are  
10 makeshift pipes and hoses in the sewage plant?

11 A No, I didn't say that.

12 Q Do you agree with me there are makeshift  
13 pipes and hoses connecting the equipment?

14 A I don't know whether I would characterize  
15 them as makeshift. I know that there are hoses that  
16 operators have used to hose off surfaces and they  
17 are -- the operators leave them where they're readily  
18 accessible and I know that there are pipes that have  
19 been installed to facilitate the way the plant is, in  
20 fact, operated. As I said, I'm told it can't be  
21 operated in the manner for which it was designed and  
22 these operators and probably with the help of

1 consulting engineers, they could operate -- operate  
2 more as a batch point, so there probably are pipes  
3 that were not apart of the initial design for the  
4 plant.

5 Q Now, you've received the supplemental  
6 direct testimony of Scott Rubin; is that correct?

7 A Oh, yes.

8 Q And did you see the photographs that were  
9 attached to the supplemental testimony as Schedule  
10 SJR 10?

11 A I recall I saw them in Ogle County.

12 Q And you would agree that they accurately  
13 reflect the condition of the sewer plant?

14 A I have no reason to believe that Mr. Rubin  
15 tried to stage some imagery. I think he took  
16 pictures of what he saw, whether they accurately  
17 reflect the condition of the sewer plant, I don't  
18 know if I'd say that, I'd say they depict what he  
19 took a picture of.

20 Q Do you -- in your view, is there a  
21 different -- strike that.

22 Let me figure how to say this. Do you



1 believe the pictures are not accurate relative to  
2 your understanding of how the sewer plant looks?

3 A I think the pictures accurately show what  
4 he took a picture of.

5 Q And he took a picture of the sewer plant;  
6 is that correct?

7 A I don't have any doubt that that those are  
8 pictures that he took in the sewer plant. I don't  
9 think he -- back in Pennsylvania pulled together some  
10 pictures from a file and pretended they were New  
11 Landing Utility. As you know, he went out there and  
12 I was really mad about it, and he took pictures and I  
13 think the pictures he took reflect what he took  
14 pictures of.

15 Q Okay. Now, do you know that the heat in  
16 the sewer building does not work?

17 A I don't know that. I do know that we are  
18 now trying to make arrangements to make some  
19 improvements to electrical service and that may have,  
20 in some respects, to do with the heating system?

21 Q Do you know how long it has been that the  
22 heat has not worked?

1           A     I'm not sure that I've been told the heats  
2     not working, it's possible that I was. I have been  
3     told that we need to get an electricians help and try  
4     to make arrangements to do that.

5           Q     Can you tell me when you were told that the  
6     sewer plant needed electrical repair?

7           A     Last week.

8           Q     Last week? Any time before then?

9           A     There may have been times; but the current  
10    problem that I've been asked to help tend to is a  
11    problem that -- an electrical problem that was  
12    brought to my attention last week and I'm trying to  
13    make arrangements to get the help we need to address  
14    the electrical problem.

15          Q     And are you trying to retain Pfoutz to do  
16    that?

17          A     Pardon.

18          Q     Are you trying to retain Pfoutz?

19          A     I will ask Pfoutz to do that, yes.

20          Q     Have they been paid, by the way?

21          A     When?

22          Q     Were they paid the money that was --

1           A     They haven't been paid since probably --  
2     we've been able -- we've not been able to pay any  
3     more payments to Pfoutz since probably or January or  
4     February.

5           Q     Of 2005?

6           A     5. We made payments to them in December  
7     and we made some payments to them in either January  
8     or February but our billing went out -- provided the  
9     creek don't dry -- today, our cash flow in the first  
10    month of the quarter is substantially greater than in  
11    the second and third quarter, so I suspect we will  
12    make additional payments to Pfoutz this month.

13          Q     The electrical problem that was brought to  
14    your attention of -- last week, what was that  
15    problem?

16          A     Well, I think it has to do with -- it may  
17    be necessary to pull another line from the power --  
18    exterior power supply into the building. I haven't  
19    had a chance to talk in detail to Greg about it but  
20    the message left to me lead me to believe that he  
21    think we need to put another line into the plant.

22          Q     So he told you or indicated to you that

1       there was insufficient power in the plant?

2           A     No, I think he was primarily concerned  
3       about light in some portions of the plant, that's  
4       what he specifically mentioned.

5           Q     And this was brought to your attention by  
6       the sewer certified operator?

7           A     Yes, it was.

8           Q     Now, do you know that there are broken  
9       valves on the computer -- on the computer --

10          A     There are broken valves --

11          Q     -- on the equipment, on the equipment in  
12       the sewer plant.

13          A     Are there broken valves?

14          Q     Yeah.

15          A     I don't know that anyone has alerted me to  
16       a problem related to broken valves.  Might there been  
17       broken valves?  There might be a lot of broken things  
18       at the plant that aren't used because it can't be  
19       operated as it was intended, so I don't know that I  
20       can say I've been alerted to a broken valve problem  
21       that we should be trying to fix.

22          Q     Do you recall the Environmental Protection

1     Agency bringing problems with the sewer plant to your  
2     attention?

3             A     I get letters from the EPA and I get  
4     letters from Mr. Connor who is, my understanding,  
5     he's with the waste water side of the EPA's  
6     operation.

7             Q     Now, I'd like to show you a document that  
8     we're marking as AG Cross Exhibit 8, this is New  
9     Landing's response to the Attorney General's data  
10    request, that's data request AG 2.6.

11                     (Whereupon, AG Cross  
12                     Exhibit No. 8 was  
13                     marked for identification  
14                     as of this date.)

15    BY MS. SATTER:

16             Q     Does this document show the question and  
17     New Landing's response to AG data request 2.6?

18             A     It does.

19             Q     And the response says, Information to  
20     count; is that correct?

21             A     That's what it says.

22             Q     And the question says, Please describe the

1 maintenance that NLU has done on the sewage treatment  
2 plant and then date is from January 1st, 1999 to the  
3 present; correct?

4 A That's the question.

5 Q Can you identify the information that was  
6 provided as a result of this response?

7 A We -- I was unable to go back into our  
8 records and pull bills and checks. My recollection  
9 was that the information related primarily to the  
10 replacement of certain blowers to the painting of the  
11 plant building and to electrical work that was  
12 requested and performed from time to time and.

13 Q You didn't provide anything, though?

14 A I didn't take the time in rush of the all  
15 the other stuff to go back and take that out.

16 Q So there was no further information  
17 provided; is that correct?

18 A No further information. This is the only  
19 response that I made.

20 Q Thank you. Now I'd like to talk to you  
21 about the water tower.

22 MS. SATTER: And, again, just for the record,

1 all of the proceeding questions and these questions  
2 as well I think are relevant to the request for a  
3 receiver.

4 BY MS. SATTER:

5 Q Now, would you agree with me that New  
6 Landing utility has spent no money on maintaining the  
7 water storage tower in the 2003 test year?

8 A In the what?

9 Q 2003 test year.

10 A I think that would be a correct statement.

11 Q And would you also agree with me that New  
12 Landing Utility has spent no money on maintaining the  
13 water storage tower since January 1st, 1999? And if  
14 you'd like, I can refer you to a response to a data  
15 request.

16 A I think that would be -- in terms of  
17 maintenance, I think that would be correct. In terms  
18 of maintaining the serviceability of the tower, we  
19 did work in 2004.

20 Q Was the work in 2004 to repair a leak?

21 A Yes.

22 Q And can you describe that leak and what

1     happened?

2             A     Sure.  I think I'm correct on these dates.  
3     On a Sunday which I think is, like, February 2nd, our  
4     people in the service territory learned that there  
5     was a leak occurring near the bottom of the water  
6     storage tower and they characterized the leak as  
7     about the size of a lead pencil and they informed me  
8     that the operator had already been alerted and had  
9     been out there and that arrangements were already  
10    being made to have the leak repaired by, essentially,  
11    a welder, it's a metal tower.  And I was informed as  
12    the plans were made to repair the leak and it was  
13    cold during that time of the year, so there's water  
14    coming out of this small hole in the tower, it became  
15    kind of a mist, so ice was forming on some of the  
16    cross bars of the support for the utility -- for the  
17    water tower on some of the legs that support the  
18    water tower.  The arrangements to get a, essentially,  
19    a cherry-picker type vehicle out to the site were  
20    completed.  The repair occurred on Thursday morning,  
21    I think February 5th or 6th.  We drained the tower,  
22    the leak was repaired in about less than an hour and



1 the water was filled -- the tower was refilled and  
2 two separate samples were taken and submitted to the  
3 EPA. I think the second sample was approved on  
4 Saturday morning. We were back to normal operation  
5 late Saturday morning. We took the tower out of  
6 service mid-morning on Thursday and put it back in  
7 service mid-morning on Saturday.

8 Q You said --

9 A As far as I know, the people continued to  
10 receive water throughout because we were able to take  
11 it and pass it from the pump directly into the system  
12 and we had a couple check valves installed on the  
13 system to protect the system, so we issued a boil  
14 order because we drained the tower and the boil order  
15 was lifted in -- I think Saturday.

16 Q Was the boil order in place on Sunday or on  
17 Thursday?

18 A On what?

19 Q When did the boil order go into effect?

20 A I think the boil order went in effect when  
21 we shut down the tower and drained it.

22 Q So that would have been Thursday?

1           A     Thursday.

2           Q     But the leak started on Sunday?

3           A     The leak started on Sunday and we -- the  
4     leak was a fractional part of our capacity to pump  
5     water into the tower, so we had no problem keeping  
6     the tower full and the pressure at normal levels  
7     until we reached the point where we had to drain it,  
8     seal it, fix it and bring it back up.

9           Q     Do you know how many gallons the water  
10    tower holds?

11          A     It is 150,000 gallon water tower but you  
12    don't put 150,000 gallons in it.

13          Q     Now, in your testimony on Page 6 you say,  
14    The water tower is, quote, in good condition all  
15    things considered.

16          A     Where are we, what page?

17          Q     On Page 6 you say that.

18          A     Where? I'm sure I said that but I might --

19          Q     It's in the first -- the paragraph  
20    entitled, Water storage tower.

21          A     I got it.

22          Q     When you first saw the water tower in 1973

1       and '74 it had rust on it; isn't that right?

2               A       I'm pausing to remember -- try to remember,  
3       I want to give you an accurate answer on this.    I  
4       don't recall that the water tower ever looked freshly  
5       painted to me.   I think the EPA allowed the developer  
6       to install a used tower and my recollection is that I  
7       never saw the tower in a condition where it looked  
8       like it had been freshly painted.   I think the EPA  
9       allowed them to install a used tower in sort of an  
10      as-is condition.

11              Q       And this tower is -- originated at the  
12      Indiana Motor Speedway; is that correct?

13              A       I'm told it was either on the infield of  
14      the speedway or nearby because if you were able to --  
15      if you looked closely and you know what you're  
16      looking for, you can see and it's shown on -- I think  
17      some of the pictures that Mr. Rubin took, the words  
18      Speedway Water Company or something to that effect.

19              Q       Now, the tower has not been painted in at  
20      least 30 years; is that correct?

21              A       I think that would be correct.

22              Q       Do you know the last time it was cleaned on

1 the outside?

2 A I don't know.

3 Q Do you know the last time the inside of the  
4 tower was cleaned?

5 A Not during my tenure.

6 Q Are you aware of any standard for  
7 maintaining a water tower -- let's go back.

8 Are you aware of any standard for  
9 cleaning the inside of a water tower?

10 A Only inasmuch as I would expect that there  
11 would be standards established by professional  
12 organizations that are involved in this industry, be  
13 it AWWA or there may be different professional  
14 organizations and I would believe that they would  
15 have recommended standards for care and maintenance  
16 of water towers.

17 Q Are you familiar with that standard?

18 A I am now.

19 Q Okay. But you weren't previously?

20 A Not as much as I was now, no. Before --

21 Q When did you become familiar?

22 A Well, about 15 years ago I think I sent a

1 letter to our customers as they -- in connection with  
2 either one of these annual picnics. I know I  
3 appeared and as I said I was trying to see what  
4 arrangement we could make to paint the tower and I  
5 learned at that time a little bit more about it.  
6 Certainly if I ever thought you could just hire a  
7 couple house painters and send them out there, I was  
8 disaviewed of that in a hurry but -- and I learned  
9 from people who I believe are knowledgeable that it  
10 is a somewhat more complicated process and that it is  
11 also a process that would be, relatively speaking,  
12 expensive in light of the resources that the Utility  
13 had available.

14 Q So would you say that you learned around  
15 1985 what was involved in painting a water tower?

16 A I'm not sure what the dates were but I know  
17 I had -- I know I've seen -- I know I received a  
18 couple of different reports from Don Finch who was  
19 the employee of Willett Hoffman Engineering  
20 (phonetic) and was the on site manager of the Utility  
21 for a number of years preceding -- predating my  
22 involvement and I know we talked about the

1 possibility of trying to figure out how to get the  
2 water -- the exterior of the water tower painted.

3 Q Would you say that was in the '80s?

4 A Pardon?

5 Q Would you say that was in the '80s?

6 A I would expect it would be -- yes.

7 Q 1985, 1988?

8 A It's probably in the letters, I can't tell.

9 Q Do you recall what -- okay.

10 So to go back, are you aware of the  
11 standard for cleaning the outside of a water tower --  
12 of the industry standard for doing that?

13 A I am now.

14 Q And what is that? How often?

15 A The -- I don't know if I'd call it a  
16 standard. I would characterize it as those involved  
17 seem to feel that it's appropriate to repaint the  
18 exterior of a water tower every 7 to 10 years and to  
19 repaint the interior of a water tower every other  
20 time that you do the exterior. So is it 7, 14? Is  
21 it 10, 20? I suppose that determination gets made on  
22 a case-by-case basis depending on the condition of

1 the water tower, which may be a great deal different  
2 if it's in Phoenix, Arizona as opposed to Hibbing,  
3 Minnesota?

4 Q Or --

5 A Morgan, Illinois.

6 Q Morgan, Illinois?

7 A But my understanding is that this is a  
8 preventative maintenance program that is recommended.

9 Q When were you last at the water tower?

10 A Pardon?

11 Q Do you recall when you were last at the  
12 water tower?

13 A Last at the water tower? A couple weeks  
14 ago.

15 Q Again, I'd like to refer you to the  
16 photographs attached to the supplemental testimony of  
17 Scott Robin and this would be Schedule SJR 9.

18 Would you agree that those photographs  
19 depict what you saw when you viewed the water tower a  
20 few weeks ago?

21 A I don't have those in front of me. I have  
22 seen them and it was my view when I did see them that

1     they were an accurate depiction of what Mr. Rubin  
2     took a picture of.  It is the New Landing Utility  
3     water tower.

4           Q     With you agree with me that the Illinois  
5     Environmental Protection Agency has brought the  
6     condition of the water tower to your attention?

7           A     Yes, they have.

8           Q     Do you remember when that first happened?

9           A     It's been over a period of years.

10          Q     Maybe 20 years?

11          A     It's brought to my attention over 20 years?  
12     It's been a long time.  I don't know when -- I don't  
13     know when they started -- for all I know, they  
14     started complaining about it the day after it went up  
15     because, to my recollection, it didn't reflect that  
16     it had been painted at the time it was put up.

17          Q     And you would agree that the condition of  
18     the water tower is the subject of the EPA suit that  
19     you describe in your testimony?

20          A     Yes, it is.

21          Q     And you said in your supplemental testimony  
22     that the Court ordered New Landing Utility to paint



1 the exterior of the water tower to extend the  
2 overflow pipe and fence the tower. Now, these things  
3 still need to be done; isn't that correct?

4 A I'm sorry?

5 Q Were these things done? Have these things  
6 been done?

7 A No, they have not been done. There's a  
8 contract attached to my supplemental testimony that  
9 outlines all of the work that we've done. It is -- I  
10 think it would be --

11 Q There's no question.

12 A -- I think it would be inappropriate --

13 Q You answered it.

14 A -- to just paint the exterior of this  
15 tower. It needs to be renovated.

16 Q You haven't done the work that was ordered  
17 on the water tower to date?

18 A I have not done the work spelled out in the  
19 September 28th Court order to date.

20 Q And you didn't do any work on the water  
21 tower while the case was pending either; did you?

22 A No.

1           Q     And the case was filed in -- was it January  
2     of 2000?

3           A     December.

4           Q     December of 2000?

5                     Now, do you recall receiving an  
6     estimate to paint the water tower in the 1980s?

7           A     I think there were two different estimates.

8           Q     Do you recall what they were?

9           A     One was -- I think one was in the range of  
10    \$25,000 and the other one was in the range of  
11    \$80,000.

12          Q     Were those two at two different times?

13          A     My recollection is they were at two  
14    different times.

15          Q     So the \$25,000 bid you received years  
16    before you received the \$80,000 bill?

17          A     I don't remember the sequence; but they  
18    were at different times.

19          Q     And you didn't accept either of these bids;  
20    obviously?

21          A     They weren't bids, they were estimates of  
22    what costs might be entailed.

1           Q     Okay.  Thank you.

2                     Now, according to your supplemental  
3     testimony you have a contract -- you have signed a  
4     contract with Utility Service Company to renovate the  
5     water tower; is that correct?

6           A     That's the Exhibit WT -- NLU Exhibit WTC-F  
7     for funding.

8           Q     Now, has this company done any work for New  
9     Landing Utility in the past?

10          A     No.

11          Q     And it looks like in the contract that  
12     they're based out of Georgia; is that correct?

13          A     My contact works out of Wisconsin, I think  
14     Whitewater, but I'm not -- I'm pretty sure it's  
15     Whitewater.

16          Q     Have they started any work pursuant to this  
17     contract?

18          A     I'm sorry?

19          Q     Have they started any work pursuant to the  
20     contact?

21          A     Yes, they have.

22          Q     What have they done?

1           A     They've repaired the applications for EPA  
2     permits and they may have done other work in their  
3     preliminary staging work but what I know for sure is  
4     that they prepared the EPA permits application.

5           Q     Do you know whether these applications have  
6     been submitted to the EPA?

7           A     I do. I signed them and I sent them.

8           Q     When did you send them?

9           A     A couple weeks ago.

10          Q     February? March?

11          A     March. I think they got to me about March  
12     7th and I was in the process of preparing for the  
13     hearings in this case that we were supposed to start  
14     on March 15th or something and when that didn't  
15     happen, I found a lull, if that's possible, in the  
16     matters relating to the Oregon Case (phonetic), I had  
17     to make changes on the permits that were submitted to  
18     me, I made the changes, I signed them and I sent  
19     them.

20          Q     Have they been approved by the EPA yet do  
21     you know?

22          A     I don't recall. I don't think I received

1     any response.   And I think they would send it to me  
2     rather than to people who signed the engineering  
3     certificate?

4           Q     Now, according to the contract, it appears  
5     that they will do a year's worth of work before  
6     they're paid; is that correct?   That the first  
7     payment by NLU to this company takes place a year  
8     after the contract was signed?

9           A     No.

10          Q     That's incorrect.   Why don't you tell me  
11     how that should work.

12          A     My understanding is that the company  
13     expects to complete the work in the early fall,  
14     paying a September completion date; it may happen  
15     faster; but they pay the September monthly completion  
16     date, and they expect the first installment to be  
17     paid when the work is done and then the next  
18     installment a year later, the -- I raised the  
19     question because I thought the contract suggested  
20     that the second installment would be due in January  
21     and then in January they say No, September,  
22     September, September.

1           Q     So you don't pay them anything until  
2 they've completed the work?

3           A     That's right.

4           Q     Now, there's a cancellation provision on  
5 the contract that says that three voting members of  
6 the company management have to opt for cancellation,  
7 did you see that provision?

8           A     I didn't see that provision.

9           Q     Are there three voting officials of the  
10 company management?

11          A     Well, if there's -- I think that has to do  
12 with the ongoing maintenance program. I think that  
13 has to do with construction -- I don't think that has  
14 to do with repair and renovation. It might -- I  
15 think that the expectation is that the -- once the  
16 work is completed and the initial three installments  
17 have been paid, then there is the annual fee of,  
18 like, \$800 that they collect and for that fee, they  
19 assume responsibility to keep the tower up to snuff  
20 inside and out conforming to all great nations  
21 existing and new.

22          Q     So you expect them as independent

1 contractors to make those decisions as to what needs  
2 to be done?

3 A Well, they'll have -- their obligations is  
4 to send the people out to inspect the tower every  
5 year and every other year inside and out and do  
6 whatever touch up sort of repairs might be necessary  
7 and then on a scheduled basis, repaint the exterior  
8 and repaint the interior, that's what the 8,800 bucks  
9 gets you.

10 Q Know, in your supplemental testimony you  
11 also refer to Judge Pemberton's (phonetic) order in  
12 the Ogle County Case 00 CH 97 --

13 A Yes.

14 Q -- and the order was entered on  
15 September 28th, 2004; correct?

16 A Yes.

17 Q And you're familiar with that order?

18 A I'm very familiar with that order.

19 Q And you would agree with me that that order  
20 required the work on the water tower to be completed  
21 by march 28th, 2005?

22 A That's the term of the order.

1           Q     Okay.  And that has not been done; is that  
2     correct?

3           A     No.

4           JUDGE BRODSKY:  Miss Satter, when you reach a  
5     convenient stopping point, please pause.

6           MS. SATTER:  This would actually be a good spot  
7     before we talk about the Ogle County.  I don't have  
8     that much more but maybe --

9           JUDGE BRODSKY:  Well, we've been going for a  
10    long time.  I think at this point we should take a  
11    break at least for lunch.

12          MS. SATTER:  Fair enough.

13          JUDGE BRODSKY:  And we will reconvene.  Let's  
14    sell, we'll take an hour and 15 minutes for lunch, so  
15    that puts us back at approximately 2:20.

16                   (Whereupon, a luncheon  
17                   recess was taken to resume  
18                   at 2:20 p.m.)

19                   (Change of reporters.)

20

21

22



1           AFTERNOON SESSION:   2:20 P.M.

2           JUDGE BRODSKY:   And, I guess it's your turn  
3   again, Ms. Satter.

4           MS. SATTER:   Okay.   I'll continue.

5                           Thank you.

6   BY MS. SATTER:

7           Q    Mr. Armstrong, I think you just mentioned  
8   the September 28th, 2004, Ogle County order when we  
9   finished for lunch, and I wanted to ask you, do you  
10   know whether there has been an appeal of that  
11   September 28th order?

12          A    There has not been an appeal.   The case is  
13   still pending.   No final order has yet entered.

14          Q    Do you know whether the utility is planning  
15   to file an appeal?

16          A    Not until there's a final order.

17          Q    Okay.   Based on the September 28th order?

18          A    Well, the September 28th order invites the  
19   utility to seek relief from the September 28th order.  
20   And if the utility has asked for relief.   And when  
21   that motion is resolved and other motions that are  
22   now pending are resolved, it will be possible to make

1 a determination of whether an appeal would be  
2 appropriate.

3 Q In your supplemental testimony, you said  
4 that NLU is hopeful that the penalties imposed will  
5 be abated.

6 To date, they haven't been abated;  
7 isn't that correct?

8 A They have not yet been abated. I remain  
9 hopeful.

10 Q Did you file a request by April 1st  
11 requesting that they be abated?

12 A Yes.

13 Q Okay. In your testimony at Page 9, you  
14 refer to the -- what you call problematic waterlines  
15 installed on the south half of the Lost Nation area.

16 Is it correct that New Landing Utility  
17 disavows any obligation to maintain those lines,  
18 those water lines?

19 A I don't know how to answer that because we  
20 do maintain them. If they break, we fix them.

21 We certainly disavow any ownership of  
22 those lines, and we do not believe that they are

1     legally attached to our distribution system. But we  
2     know from experience that if they break, they need to  
3     be fixed. And unless we get somebody out there to do  
4     it, we won't be -- we'll be wasting a lot of water.

5           Q     So New Landing Utility recognizes an  
6     obligation to repair the lines; is that correct?

7           A     No, we recognize a need to repair them.

8           Q     Okay. Do you recall your response to AG  
9     data request 2.10?

10          A     Not as I sit here.

11          Q     Why don't you let us show you what's been  
12     marked as AG Cross Exhibit 9.

13                     (Whereupon, AG Cross  
14                     Exhibit No. 9 was  
15                     marked for identification  
16                     as of this date.)

17     BY MS. SATTER:

18           Q     Does this refresh your recollection that in  
19     response to the question to describe and provide all  
20     documents showing the costs and expenses NLU incurred  
21     since January 1st, 1999, to maintain as opposed to  
22     repair the old problematic water lines, your answer

1     was, quote, NLU disavows any obligation to maintain  
2     these water lines.  Therefore, no such documents  
3     exist.

4             A     Yes, I think that's what I said.  I just  
5     said, We disavow an obligation, but we do not disavow  
6     a need and we respond to the need.

7             Q     So your answer is -- the answer shown on  
8     this exhibit is correct from your point of view?

9             A     As explained by my answer to your question.

10            Q     Okay.  Now, you also said in your testimony  
11     that no one disagrees that the lines need to be  
12     replaced.  On Page 10, you make that statement.

13                         Has New Landing Utility conducted any  
14     study to compare the cost of repairs against the cost  
15     of replacement over time?

16            A     I'm not sure I understand your question.

17            Q     Have you done any -- has New Landing  
18     Utility done any study to determine the cost of  
19     replacing the lines new?

20            A     Only in the broadest sense of cost per  
21     running foot estimates.

22            Q     Have you done any study of the cost of

1       repairs of those lines?

2               A       Well, yeah, I think I presented an exhibit  
3       that was my effort to try to compare the costs to  
4       repair and maintain the old lines by contrast to the  
5       cost to repair and maintain lines that were installed  
6       by or for the utility.

7                       And it was my view that -- that they  
8       are more costly to repair the old lines than it is to  
9       repair and maintain lines that were constructed and  
10      installed for the utility.

11              Q       But only -- other than in the broadest  
12      sense, you haven't looked at what it would cost to  
13      install new lines for Lost Nation?

14              A       Only what I've said.

15              Q       Yeah.

16              A       I've made determinations based on estimates  
17      on a running foot basis.

18              Q       Is it true that the condition of the lines  
19      in Lost Nation is such that if there is a leak on the  
20      line, on one of the Lost Nation lines, the entire  
21      system has to be shut down?

22              A       That seems to be the case.

1                   The people who installed these lines  
2     made no effort to create any valves that would  
3     isolate any portion of the old lines. It's just one  
4     mass spider web of lines that go in directions that  
5     are sometimes unknown.

6                   And when a leak occurs anywhere on the  
7     system of old lines, it seems to affect everybody on  
8     the old lines. And it's been -- it's been a  
9     continuing source of consternation both for the  
10    people who take water from those old lines and for  
11    the utility in its effort to provide the service that  
12    we'd like to provide.

13           Q     Do you agree that there have been three  
14    major water main breaks at New Landing Utility?

15           A     Well, I can remember three. There perhaps  
16    might be others that someone would consider to be  
17    major, but I can remember the two breaks in the line  
18    that passed through the creek bed on the east side of  
19    the lake.

20                   And I can also remember a break of  
21    12-inch main that takes water from the well site  
22    across the creek below the dam to the entire west

1 side.

2 Those were -- certainly, the 12-inch  
3 main was a major break, and both -- all of these were  
4 storm damage breaks.

5 Q And when were those, do you recall?

6 A The 12-inch line, I believe, broke  
7 within -- was -- basically washed out. I think that  
8 happened within the last five years.

9 And the break across the creek bed on  
10 the east side of the lake are probably maybe as much  
11 as ten or more years ago because when the last time  
12 that happened, we made arrangements to lower that  
13 line into the creek bed as opposed to having it sit  
14 on the creek bed where it would be susceptible to  
15 debris that would wash down the creek in a major  
16 thunderstorm.

17 Q Now, I want to turn your attention for a  
18 minute to your relationships to -- with any bank.

19 When you took over New Landing -- when  
20 you became president of New Landing Utility in 1984,  
21 did a local bank in Dixon handle the billing and  
22 collection?

1           A     Prior to the time that I became president,  
2     there was in place what they refer to as a lockbox  
3     system, which I have never had a lockbox system, but  
4     I understand is a system where checks and payment  
5     bills arrive at the bank. And the bank opens the  
6     mail and deposits a check, sends some kind of report  
7     to the customer.

8                     The billing was not done by the bank.  
9     The billing was done by the AMI corporation in some  
10    fashion. And customer relations and account  
11    maintenance and -- the only thing the bank did on the  
12    lockbox basis was open the envelope, take out the  
13    checks and put them in the checking account and send  
14    the report.

15           Q     And you terminated the relationship with  
16    the local bank; is that correct?

17           A     Yes, I did.

18           Q     And you opened a relationship with another  
19    bank in Oak Park; is that correct?

20           A     Yes, I did.

21           Q     Okay. Now, you have recently attempted to  
22    obtain loans from a few banks in the Oak Park area;



1       isn't that correct?

2               A     Not quite.  I inquired of local banks as to  
3       what the -- the prospects might be for the utility to  
4       borrow money.

5               Q     Let me show you two documents, one marked  
6       as AG Cross Exhibit 10 and the other marked as AG  
7       Cross Exhibit 11.

8                               (Whereupon, AG Cross  
9                               Exhibit Nos. 10 and 11 were  
10                              marked for identification  
11                              as of this date.)

12    BY MS. SATTER:

13               Q     And if you can tell me whether these  
14       documents are correspondence that you received as  
15       president of New Landing Utility from banks in  
16       response to your inquiry.

17                              Turning to AG Cross Exhibit 10 --

18               A     Yes.

19               Q     -- is that a -- it's on the letterhead of  
20       the First Bank of Oak Park; is that correct?

21               A     It is.

22               Q     And dated January 20th, 2005?

1           A     Correct.

2           Q     And was this letter written to you in  
3     response to an inquiry you made about financing?

4           A     I had a fairly lengthy meeting with  
5     Mr. Pinkston (phonetic), who is the vice president,  
6     and with Mr. Kelly, who is the chief decision-maker,  
7     perhaps owner. I'm not quite sure all the hats that  
8     he wears, but he's the top guy. And another banker.  
9     I don't remember her name. And we talked quite a bit  
10    about the utility's needs and how they might be met.

11          Q     And you ultimately did not file an  
12    application for a loan to this bank?

13          A     At that time, I did not.

14          Q     Okay. And as a result of this letter, you  
15    will not file an application at this point; is that  
16    correct?

17          A     No, that's not true at all. I think  
18    they're my primary prospect for borrowing money.

19          Q     But as of today, they're not in a position  
20    to offer you a loan; is that correct.

21          A     No, that's not true.

22                     Well, let me -- I don't want to

1       confuse the record.

2                       Your question was, are they in a  
3       position to extend the loan to me.

4               Q       Today.

5               A       Today.  It is my view, based on my meetings  
6       and my prior banking relationships and friendships  
7       with these people, that if the question were, Will  
8       you extend a loan to Gene Armstrong would be -- the  
9       answer would very likely be different from will you  
10      extend a loan to New Landing.

11                      And it might be different if the  
12      question were, Will you extend the loan to  
13      New Landing guaranteed by Gene Armstrong.  All of  
14      those could elicit a different response.

15                      This response, Exhibit AG Cross Exam  
16      10, is a response to the question that I asked him,  
17      will you extend a loan to New Landing Utility.

18               Q       And that was the extent -- that was the --  
19      that was the question you asked them.  You didn't ask  
20      the other ones that you just --

21               A       I asked the other ones as well.

22               Q       But -- okay.  So the answer then is only to

1     that one?

2             A     Pardon?

3             Q     This letter is only in response to a loan  
4     to the utility itself?

5             A     To the utility with no guarantees.

6             Q     Did the bank offer to lend you money or to  
7     accept an application if you were to guarantee it  
8     personally, if you were to guarantee the loan  
9     personally?

10            A     My impression is that that would be a  
11     requirement.

12            Q     And Cross Exhibit No. 11, is that a  
13     response to an inquiry you made to Community Bank of  
14     Oak Park and River Forest?

15            A     Yes.

16            Q     In your testimony -- in your direct  
17     testimony, you say that you didn't want to do  
18     anything in response to the EPA's case unless the  
19     entire case could be resolved. That's at Page 7.

20                   And is it correct that you did not --  
21     you did not want to do anything concerning the  
22     Lost Nation lines -- strike that.

1                   Is it correct that you did not want to  
2    seal the wells that are connected to the Lost Nation  
3    lines because you were concerned that would undercut  
4    your position that you have no responsibility for  
5    those lines?

6           A     I think that the correct answer to your  
7    question is, it was my position that the utility  
8    should not seal the old Lost Nation wells because the  
9    utility never owned, operated, used or drew water  
10   from the old Lost Nation wells.

11                   They were abandoned before the utility  
12   started doing business.  There was -- I was willing  
13   to concede there may be an exception with respect to  
14   Well No. 8.  But with respect to all the other wells,  
15   that was my position.

16           Q     So you just disavowed responsibility for  
17   those wells?

18           A     Yes.

19           Q     Now, do you -- we talked earlier about the  
20   independent contractors that you have retained for  
21   New Landing Utility.

22                   Has New Landing Utility retained an

1 accountant?

2 A We have used an accountant for -- to assist  
3 in matters relating to tax returns.

4 Q Would that be the -- but New Landing  
5 Utility hasn't filed any tax returns?

6 A Not all our tax returns.

7 Q New Landing Utility has filed its tax  
8 returns?

9 A State and federal.

10 Q When they were due?

11 A Pardon?

12 Q When they were due?

13 A No, they were filed last year.

14 Q For how many years were they filed last  
15 year?

16 A I think they went all the way back to 1984.

17 Q And that was the purpose for which you  
18 retained an accountant?

19 A No. I retained an accountant several years  
20 earlier to -- about three years earlier to try to see  
21 how the utility might resolve this question of the  
22 income tax returns. And that company looked at it

1 and prepared a sample tax return for one year.

2 We -- I did not think it was correct  
3 in certain respects, but it was certainly very, very  
4 instructive.

5 I asked about completing tax returns  
6 for all years or at least back through -- I think it  
7 was 1994. And the projected accounting fee was like  
8 \$30,000, and I concluded that we'd have to figure out  
9 a way to do it that would not involve an outlay for  
10 those costs.

11 Q Okay. You currently don't have an  
12 accountant that's helping you with your operations,  
13 the operations of New Landing Utility, that is,  
14 billing, collection, financial reports --

15 A We never had an accountant to do billing  
16 and collection.

17 Q How about for preparation of your annual  
18 report to the Illinois Commerce Commission?

19 A We've never used an accountant to  
20 prepare -- most accountants --

21 Q Wait. Wait. Did you --

22 A -- are confused by the annual report.

1           Q     You have not used an accountant to  
2     produce --

3           A     We have not used an accountant to prepare  
4     an annual report.

5           Q     Okay. Now, do you -- you have been  
6     participating in the Ogle County case that was  
7     brought on behalf of the People of the State of  
8     Illinois and the Environmental Protection Agency, 00  
9     CH 97, correct?

10          A     I'm a party.

11          Q     You're a party.

12                     Let me show you what's been marked as  
13     AG Cross Exhibit 12. And I'd just like you to  
14     confirm that this is a copy of an order that was  
15     entered on March 29th, 2005.

16                     (Whereupon, AG Cross  
17                     Exhibit No. 12 was  
18                     marked for identification  
19                     as of this date.)

20           THE WITNESS: This order was entered on  
21     March 29th.

22     BY MS. SATTER:



1           Q     Now, returning for a minute to AG Cross  
2     Exhibit 3.

3           A     To which?

4           Q     AG Cross Exhibit 3. That's a check from  
5     New Landing Utility to DAME Co. We talked about that  
6     earlier?

7           A     Yes.

8           Q     And you noted that the notation on the  
9     check says toward interest due on the \$2,500 -- no,  
10    I'm sorry. Maybe you can just tell us what is this  
11    \$2,500 payable for?

12          A     Okay. It is my position that New Landing  
13    Utility owes income money on the long-term mortgage  
14    note, on the accounts payable to Associated  
15    Companies, on advanced from Associated Companies and  
16    on the letter agreement that obligated New Landing to  
17    pay to AMI \$2,000 every time a house was connected up  
18    until 1990 or 1991.

19                   This check is payment toward amounts  
20    that New Landing owes to DAME Co. I characterize it  
21    toward interest on the long-term debt, but there were  
22    other descriptions that would have been appropriate.

1           Q     Were any of these agreements between  
2     New Landing Utility and DAME Co. approved by the  
3     Illinois Commerce Commission?

4           A     Were any what?

5           Q     Were any of these agreements between  
6     New Landing Utility and DAME Co. approved --

7           A     Which agreements?

8           Q     The ones you just described that were the  
9     basis of this \$2500 --

10          A     The agreement --

11          Q     -- check?

12          A     The agreement for the -- the letter  
13     agreement is an agreement between the utility and AMI  
14     that was approved by the Commission, and AMI assigned  
15     that -- its rights under that agreement to DAME  
16     Company.

17                     The obligations to pay advances to  
18     Associated Company were established by the Commission  
19     when it entered its order in the consolidated cases,  
20     and AMI assigned its right to receive those repayment  
21     of those advances to DAME Company.

22                     The amounts due on the accounts

1 payable to Associated Companies was also an account  
2 that there was a substantial balance that was  
3 recognized by the Commission when it entered the  
4 order in the consolidated cases. And the right to  
5 collect those accounts payable to Associated  
6 Companies was assigned by AMI to DAME Company.

7 And the long-term mortgage note that  
8 the Commission approved and allowed the utility to  
9 issue to AMI was also assigned by AMI to DAME  
10 Company.

11 Q And did the Commission approve that  
12 assignment?

13 A What assignment?

14 Q The assignment of the note, the obligation  
15 from AMI to DAME?

16 A The obligation -- the assignment of the  
17 long-term note was not approved by the Commission.

18 MS. SATTER: Okay. Thank you.

19 I have no further questions.

20 JUDGE BRODSKY: Who wants to go next?

21 MS. VON QUALEN: Oh I'll be happy to.

22 JUDGE BRODSKY: Okay. Please proceed.

1 THE WITNESS: Can you pull the mike closer.

2 MS. VON QUALEN: I can.

3 CROSS-EXAMINATION

4 BY

5 MS. VON QUALEN:

6 Q Good afternoon, Mr. Armstrong.

7 A How are you today?

8 Q Just fine.

9 I have a few questions for you.

10 They're very simple questions. And, hopefully, this  
11 won't take very long. And I will not confuse you, if  
12 I can help it.

13 A I'll judge whether they're simple, but I'll  
14 try to answer, anyway.

15 Q Mr. Armstrong, you recall the staff sending  
16 you quite a number of data requests during the  
17 pendency of this case, do you not?

18 A I think I received in total upwards of 175  
19 data requests some with multiple parts, and I did my  
20 best to respond to them.

21 Q And when you responded, you provided  
22 accurate information to the best of your ability; is

1       that correct?

2               A     To the best of my ability, that's what I  
3       tried to do.

4               MS. VON QUALEN:   Thank you.

5                       Now, I would like to show you what I  
6       would ask would be marked as Staff Cross Exhibit 3.

7                       (Whereupon, Staff Cross  
8                       Exhibit No. 3 was  
9                       marked for identification  
10                      as of this date.)

11      BY MS. VON QUALEN:

12              Q     Mr. Armstrong, do you recognize that as  
13      your response to Staff data request FD-8?

14              A     I do.

15              Q     And is the response that you provided true  
16      and correct?

17              A     It is my response.

18              MS. VON QUALEN:   Judge, at this time, I would  
19      ask for Staff Cross Exhibit 3 to be entered into  
20      evidence.

21              JUDGE BRODSKY:   Any objection?

22              MS. FELTON:   No objection.

1 JUDGE BRODSKY: Hearing none, it will be  
2 entered.

3 (Whereupon, Staff Cross  
4 Exhibit No. 3 was  
5 admitted into evidence as  
6 of this date.)

7 MS. FELTON: Excuse me. I take that back.

8 On the relevancy, we object to the  
9 admission of this piece of evidence.

10 JUDGE BRODSKY: Oh, okay. Response?

11 MS. VON QUALEN: Yes.

12 This response -- the question was if  
13 the need arose, how would New Landing obtain new  
14 equity capital, and Mr. Armstrong responded that the  
15 utility believes that no informed investor would be  
16 willing to provide investment capital.

17 This response was replied upon by  
18 Ms. Phipps (phonetic) when determining what the cost  
19 of debt was to the company, and it is relevant to  
20 this proceeding.

21 JUDGE BRODSKY: I agree. Objection's  
22 overruled.

1                   The document is admitted as Staff  
2 Cross Exhibit 3.

3                   (Whereupon, Staff Cross  
4 Exhibit No. 3 was  
5 admitted into evidence as  
6 of this date.)

7           MS. VON QUALEN: I would now like to show you  
8 what will be marked as Staff Cross Exhibit 4.

9                   (Whereupon, Staff Cross  
10 Exhibit No. 4 was  
11 marked for identification  
12 as of this date.)

13 BY MS. VON QUALEN:

14           Q     Mr. Armstrong, do you recognize that as  
15 your response to Staff data request FD-9?

16           A     I do.

17           Q     And is that response true and accurate, to  
18 the best of your ability?

19           A     As to New Landing Utility, I believe that's  
20 correct.

21           MS. VON QUALEN: Thank you.

22                   Your Honor, at this time, I would move

1       for admission into evidence of Staff Cross Exhibit 4.

2               MS. FELTON:   And I'm going to object as well  
3       for the same grounds and for the grounds that just  
4       because the witness has relied upon it does not  
5       necessarily make it relevant.

6               MS. VON QUALEN:   Your Honor, for the same  
7       reasons, Staff believes that it is relevant.

8               JUDGE BRODSKY:   Yeah, I -- I find it relevant  
9       for the same reasons as well.

10                       I think that the objection to the  
11       reliance, I don't think that's determinative of  
12       relevancy either, but it is relevant.

13                       So Staff Cross Exhibit 4 is admitted.

14                               (Whereupon, Staff Cross  
15                               Exhibit No. 4 was  
16                               admitted into evidence as  
17                               of this date.)

18               MS. VON QUALEN:   I will now show you what I  
19       would like to be marked as Staff Cross Exhibit 5.

20                               (Whereupon, Staff Cross  
21                               Exhibit No. 5 was  
22                               marked for identification



1 as of this date.)

2 BY MS. VON QUALEN:

3 Q Mr. Armstrong, is that a true and accurate  
4 copy of the response that you provided in response to  
5 Staff data request FD-10?

6 A It is a copy of my response to -- of the  
7 utility's response to Staff data request FD-10.

8 MS. VON QUALEN: Your Honor, at this time, I  
9 would move for admission into evidence of ICC Staff  
10 Cross Exhibit 5.

11 MS. FELTON: Again, your Honor, I would object.

12 The -- information elicited of  
13 Mr. Armstrong is related more appropriately to the  
14 affiliated interests case, not to this one.  
15 Therefore, it's not relevant to this matter.

16 MS. VON QUALEN: Judge, it is relevant to this  
17 matter.

18 These are some of the things that  
19 Staff relied upon. And the ownership of the utility  
20 is relevant to this matter as are financial  
21 statements which could -- had they been available,  
22 would have been provided to our finance witness.

1           MS. FELTON:  What was not unavailable?  I'm  
2   sorry.  I'm just curious what information was  
3   unavailable --

4           MS. VON QUALEN:  The response says, DAME  
5   Company has no 2003 financial statements.

6           JUDGE BRODSKY:  All right.  Well, as to the  
7   objection that was raised, the objection's overruled.  
8   The document's admitted.

9                               (Whereupon, Staff  
10                              Exhibit No. 5 was  
11                              admitted into evidence as  
12                              of this date.)

13          JUDGE BRODSKY:  Is there a further discussion  
14   on the second sentence of the response on that  
15   document?

16          MS. FELTON:  No.

17          JUDGE BRODSKY:  Okay.  Then let's move on.

18          MS. VON QUALEN:  I will now show you what I  
19   would ask to be marked as Staff Cross Exhibit 6.

20                              (Whereupon, Staff Cross  
21                              Exhibit No. 6 was  
22                              marked for identification

1 as of this date.)

2 BY MS. VON QUALEN:

3 Q Mr. Armstrong, is that a true and accurate  
4 copy of the response that the company provided to  
5 Staff data request FD-13?

6 A It is.

7 MS. VON QUALEN: Your Honor, at this time, I  
8 would move for admission into evidence of Staff Cross  
9 Exhibit 6.

10 MS. FELTON: For the same reasons, we would  
11 object.

12 JUDGE BRODSKY: Okay. Sorry, but, Ms. Felton,  
13 overruled.

14 Admitted.

15

16

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18

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22

1                   (Whereupon, Staff Cross  
2                   Exhibit No. 6 was  
3                   admitted into evidence as  
4                   of this date.)

5           MS. FELTON: Just making a record.

6           MS. VON QUALEN: I will now show you what I  
7 will ask be marked as Staff Cross Exhibit 7.

8                   (Whereupon, Staff Cross  
9                   Exhibit No. 7 was  
10                  marked for identification  
11                  as of this date.)

12 BY MS. VON QUALEN:

13           Q     Mr. Armstrong, is that a true and accurate  
14 copy of the response provided by the company to Staff  
15 data request FD-15?

16           A     I'll take the time to look over it  
17 carefully.

18                   It is.

19           MS. VON QUALEN: Judge, at this time, I move  
20 for admission into evidence of Staff Cross Exhibit 7.

21           MS. FELTON: No objection.

22           JUDGE BRODSKY: Now, you asserted the note as

1     one of the things you were seeking to recover in the  
2     new rates, correct?

3             MS. FELTON:   The note was what we were seeking  
4     to recover, you said?

5             JUDGE BRODSKY:  You were seeking to recover  
6     costs related to the note in the new rates?

7             THE WITNESS:  I don't think that's correct.

8                     I think what we're asking for is rates  
9     at a certain level and would hope that rates at the  
10    level that we ask for would be put the utility in the  
11    position where, at some day, it might be able to pay  
12    the obligations the Commission authorized it to make,  
13    but that's downstream.

14                    I mean, we have other obligations that  
15    will again come first.

16             JUDGE BRODSKY:  All right.  The objection's  
17    overruled.

18                    The evidence is admitted.

19                    (Whereupon, Staff Cross  
20                    Exhibit No. 7 was  
21                    admitted into evidence as  
22                    of this date.)

1 MS. VON QUALEN: Mr. Armstrong, I will now show  
2 you what I'm marking as Staff Exhibit -- Cross  
3 Exhibit 8.

4 (Whereupon, Staff Cross  
5 Exhibit No. 8 was  
6 marked for identification  
7 as of this date.)

8 BY MS. VON QUALEN:

9 Q Is this a true and accurate copy of the  
10 response that the company provided to Staff data  
11 request WD-1.12?

12 A It is.

13 MS. VON QUALEN: Judge, at this time, I move  
14 for admission into evidence of Staff Cross Exhibit 8.

15 MS. FELTON: No objection.

16 JUDGE BRODSKY: Okay. Then Staff Cross 8 is  
17 admitted.

18 (Whereupon, Staff Cross  
19 Exhibit No. 8 was  
20 admitted into evidence as  
21 of this date.)

22 MS. VON QUALEN: I will now show you what I

1 will be (sic) asked to be marked as Staff Cross  
2 Exhibit 9.

3 (Whereupon, Staff Cross  
4 Exhibit No. 9 was  
5 marked for identification  
6 as of this date.)

7 BY MS. VON QUALEN:

8 Q Mr. Armstrong, is this a true and accurate  
9 copy of the response provided by the company to Staff  
10 data request -- I'm sorry, AG data request 2.17?

11 A Not sure. I'll have to look at it.

12 It appears to be a supplemental  
13 response. And without review of whatever document  
14 may have preceded this, I don't know whether the  
15 supplemental response is a complete response or  
16 whether there was something else reported in a  
17 previous response.

18 This information is accurate  
19 information. And it's possible that in the initial  
20 response, I simply said information to come or  
21 something like that. I just don't know whether I  
22 provided additional data, but this, I'd characterize

1 as a supplemental response.

2 This supplemental response is correct.  
3 Whether there's more, I can't say.

4 MS. VON QUALEN: Okay. Judge, at this time, I  
5 move for admission of Staff Cross Exhibit 9.

6 JUDGE BRODSKY: Any objection?

7 MS. FELTON: No objection.

8 JUDGE BRODSKY: Okay. Then Staff Cross  
9 Exhibit 9 is admitted.

10 (Whereupon, Staff Cross  
11 Exhibit No. 9 was  
12 admitted into evidence as  
13 of this date.)

14 MS. VON QUALEN: Now, Mr. Armstrong, I will  
15 show you what I will ask be marked as Staff Cross  
16 Exhibit 1.

17 (Whereupon, Staff Cross  
18 Exhibit No. 10 was  
19 marked for identification  
20 as of this date.)

21 BY MS. VON QUALEN:

22 Q I believe, Mr. Armstrong, previously today,



1     you already testified that you recognize this as your  
2     response to data request AG 4.7?

3             A     I'm sorry. I was looking at this and  
4     didn't hear what you said.

5             Q     I'm sorry if I interrupted your review.

6             A     I'm familiar with what I have in my hand  
7     now.

8                     Go ahead.

9             Q     I was saying, I believe you already  
10     recognized the response itself. The first page of  
11     the response, when Ms. Satter was asking you  
12     questions, she provided you this.

13                     But attached to this particular one  
14     are the attachments that I believe you provided with  
15     the response as well.

16                     Do you recognize them?

17             A     I do.

18             Q     And are they true and accurate copies of  
19     the responses that you provided or the company  
20     provided for AG 4.7?

21             A     I believe they are.

22             MS. VON QUALEN: Thank you.

1                   Judge, I move for admission into  
2 evidence of Staff Cross Exhibit 10.

3           MS. FELTON: No objection.

4           JUDGE BRODSKY: None?

5           MS. FELTON: None.

6           JUDGE BRODSKY: Okay.

7           THE WITNESS: Then Staff Cross Exhibit 10 is  
8 admitted.

9                   (Whereupon, Staff Cross  
10 Exhibit No. 10 was  
11 admitted into evidence as  
12 of this date.)

13           MS. VON QUALEN: Finally, I will show you what  
14 I would ask be marked as Staff Cross Exhibit 11.

15                   (Whereupon, Staff Cross  
16 Exhibit No. 11 was  
17 marked for identification  
18 as of this date.)

19 BY MS. VON QUALEN:

20           Q     Mr. Armstrong, is that a true and correct  
21 copy of the response that the company provided to  
22 Staff data request WD 1.08?

1           A     It is true and accurate.

2           MS. VON QUALEN:   Thank you.

3                     Judge, I move for admission into

4 evidence of Staff Cross Exhibit 11.

5           MS. FELTON:   No objection.

6           JUDGE BRODSKY:   Okay.   Staff Exhibit 11 is

7 admitted.

8                     (Whereupon, Staff Cross

9                     Exhibit No. 11 was

10                    admitted into evidence as

11                    of this date.)

12           MS. VON QUALEN:   If I could have just one

13 minute, Judge.

14           JUDGE BRODSKY:   That's fine.

15           MS. VON QUALEN:   Thank you, Judge.

16                     That concludes my cross-examination

17 for Mr. Armstrong.

18           JUDGE BRODSKY:   Okay.   So just to summarize,

19 we've admitted Staff Cross Exhibits 3 through 11.

20 And earlier this morning, we had indicated that Staff

21 Cross Exhibits 1 and 2 would be admitted upon their

22 filing.

1 MS. VON QUALEN: Yes. And I'm sorry, but I  
2 misspoke. I just do have just a couple questions of  
3 Mr. Armstrong.

4 JUDGE BRODSKY: Okay.

5 BY MS. VON QUALEN:

6 Q Earlier this afternoon, you testified that  
7 you filed all of your tax returns last year?

8 A Correct.

9 Q And when did you file them last year?

10 A I spent most -- I spent a great deal of  
11 time in November doing that work. So it would have  
12 been late November, early December.

13 Q And when you testified that it was all the  
14 way back to 1984, would that be 1984 through 2004?

15 A I don't think I filed 1984. It was my  
16 understanding and belief that 1984 was filed by AMI.

17 Q Okay. So would it be 1985 through 2004?

18 A 2003. 2004 is in the process.

19 Q In regards to the water certified operator,  
20 Mr. Cox?

21 A I'm sorry?

22 Q The certified operator for water,

1 Mr. Cox --

2 A Yes.

3 Q -- has he resigned his position with

4 New Landing?

5 A Is he still our operator?

6 Q Yes.

7 A Yes.

8 Q As of today, he still is?

9 A As far as I know.

10 MS. VON QUALEN: That concludes my questions

11 for Mr. Armstrong.

12 Thank you.

13 JUDGE BRODSKY: Okay. Thank you.

14 Mr. Lowe?

15 MR. LOWE: Could we play musical chairs here

16 for a moment.

17 JUDGE BRODSKY: That's fine.

18 MS. SATTER: I also wanted to ask for admission

19 of AG Cross Exhibits 1 through 13 -- I'm sorry, 12.

20 12. We only went to 12.

21 MS. FELTON: No objection by the company.

22 JUDGE BRODSKY: Okay. And hearing no other

1 objections, then we'll admit AG Cross exhibits 1  
2 through 12.

3 (Whereupon, AG Cross  
4 Exhibit Nos. 1 through 12 were  
5 admitted into evidence as  
6 of this date.)

7 MS. SATTER: Thank you very much.

8 MR. LOWE: May I proceed?

9 JUDGE BRODSKY: Whenever you're ready, please.

10 MR. LOWE: Mr. Armstrong --

11 JUDGE BRODSKY: Pull the mike. Great. Thank  
12 you.

13 CROSS-EXAMINATION

14 BY

15 MR. LOWE:

16 Q Mr. Armstrong?

17 A Hello.

18 Q Just to make it clear, you have been the  
19 attorney for New Landing Utility at least from the  
20 time that it applied for its Certificate of Public  
21 Convenience and Necessity?

22 A No.

1           Q     No?

2           A     The Certificate of Public Convenience and  
3     Necessity had been issued by this Commission before  
4     anyone approached me to provide any of the service  
5     for New Landing.

6           Q     You are familiar, however, with the  
7     provision of the Certificate of Public Convenience  
8     and Necessity?

9           A     Generally speaking, yes.

10          Q     All right. In Paragraph 11, at Page 4 of  
11     the certificate, it says, The certificate herein was  
12     granted and conditioned upon petitioner installing  
13     water mains no smaller than six inches in diameter  
14     except for the mains who serve a limited number of  
15     services and cannot be extended, in parentheses,  
16     cul-de-sacs, end parentheses.

17                     Are you familiar with that provision?

18          A     I don't have it before me, but I know that  
19     the Commission did condition the grant of the  
20     certificate on two different conditions.

21                     One was related to the size of water  
22     mains that the utility could install to provide

1 service to its customer, and the other was related to  
2 whether the utility could file rates schedules that  
3 included availability charge rates.

4 Q You were the attorney, however, I believe  
5 in consolidated case 79-0673 and 79-0675?

6 A Those are the Affiliated Interests case --

7 Q Correct?

8 A -- and -- case that were presented to the  
9 Commission and the order entered in 1981.

10 Q Yes.

11 A I was involved.

12 Q And you're familiar with provisions of the  
13 order in that consolidated case?

14 A I've read it many times. It's a long  
15 order.

16 Q Right. Specifically, that order provides  
17 that there has been presented to the Commission a  
18 conveyance by which AMI quitclaims to the utility  
19 certain real property, including easements situated  
20 within the utility's certificated service territory,  
21 a copy of said deed being attached to the petition as  
22 Exhibit C.



1           A     I remember the background on that  
2 particular exhibit, yes. The quitclaim -- bill of  
3 sale and the quitclaim --

4           Q     Right.

5           A     -- conveyance.

6           Q     Now, to the best of your knowledge, was  
7 there an exclusion from either of those documents of  
8 the so-called problematic water lines?

9           A     Absolutely.

10          Q     That was a specific exclusion?

11          A     They were excluded because AMI didn't own  
12 them. They could only quitclaim what they owned, and  
13 they didn't own them.

14          Q     So your position is that AMI did not own  
15 those lines?

16          A     They did not own those lines. They never  
17 owned those lines.

18          Q     Did they own the easements that the lines  
19 are located in?

20          A     They were -- they were transferred --  
21 rights to use easements. I don't know whether they  
22 were transferred -- title to the easements, but there

1     were some 26 or so described easement parcels in the  
2     conveyance to AMI.

3             Q     And so those easements were transferred to  
4     New Landing Utility; is that correct?

5             A     No, I've given you a misimpression.

6                     The easements were transferred to  
7     New Landing Utility by New Landing, Inc. They were  
8     not transferred to New Landing Utility by AMI.

9                     AMI quitclaimed whatever interest it  
10    had, if any, in those easements by the documents you  
11    referred to. At the time of the conveyance to  
12    New Landing utility, the conveyance was from  
13    New Landing, Inc., the developer of the New Landing  
14    subdivision, to New Landing Utility, Inc., the holder  
15    of the certificate.

16            Q     To your knowledge, is there a specific  
17    exclusion in any of those transfer documents once  
18    New Landing or New Landing Development Company to  
19    New Landing Utility or from AMI to New Landing  
20    Utility excluding those undersized lines?

21            A     Yes.

22            Q     There's specific language?

1           A     Specific language of exclusion.

2                     You want to know which one?

3           Q     Yes.

4           A     The developer of Lost Nation made the  
5     installation of these crummy lines and failed.  The  
6     New Landing Development Company came in to create a  
7     new subdivision adjacent to the Lost Nation  
8     subdivision.

9                     The Lost Nation Development Company by  
10    warranty deed and by quitclaim deed conveyed to  
11    New Landing Development various properties including  
12    by specific description the water and sewer -- or the  
13    water lines and facilities that Lost Nation  
14    Development had installed in the Lost Nation  
15    subdivision.

16                    Neuland, thereafter, by warranty deed  
17    and I think also quitclaim deed, transferred to  
18    New Landing, Inc., the developer of New Landing  
19    subdivision.  And the transfer from Neuland  
20    Development, that a photocopy of the exhibit which  
21    described the properties transferred by Neuland -- by  
22    Lost Nation to Neuland -- they photocopied the

1     exhibit, except the last paragraph of the exhibit,  
2     which was the paragraph which described the transfer  
3     and conveyance of the utility facilities and the  
4     water lines, was deleted and left off. It was  
5     dropped.

6                     Neuland did not transfer to  
7     New Landing, Inc., the water facilities, and that's  
8     what the exhibit to the document of transfer shows.

9                     Thereafter, New Landing, Inc., the  
10    developer, using the same exhibits, transferred that  
11    property to New Landing Utility, Inc. Again, the  
12    specific description of the water lines was not  
13    included. It's the last paragraph in the deed of --  
14    in the description of the -- which is the exhibit to  
15    the transfer by Lost Nation to Neuland.

16                    It is not a part of the transfer from  
17    Neuland to New Landing, Inc. It's not a part of the  
18    transfer from New Landing, Inc., to New Landing  
19    Utility.

20                    These documents have been part of the  
21    public record in Ogle County since about the time  
22    they were made. They were exhibits in the EPA

1 enforcement action.

2 Q So you're referring to the paragraph which  
3 was in the nature of the bill of sale, correct?

4 A I'm what?

5 Q You're referring to a paragraph in the  
6 deeds which is in the nature of a bill of sale?

7 A No, I'm referring to the deed of conveyance  
8 by Lost Nation to Neuland, the deed of conveyance by  
9 Neuland to New Landing, Inc., and the deed of  
10 conveyance from New Landing, Inc., to New Landing  
11 Utility.

12 Those are all deeds of conveyance that  
13 are recorded in Ogle County, Recorder of Deeds, and  
14 what I have described as the exhibit, what it  
15 included when it came from Lost Nation to Neuland and  
16 what was excluded when it went from Neuland to  
17 New Landing, Inc., to New Landing Utility, Inc. It's  
18 a correct description of the exhibit attached to  
19 those documents.

20 Q So, in your opinion as a lawyer, who owns  
21 those lines?

22 A I'm sorry?

1           Q     In your opinion as a lawyer, who owns those  
2     lines?

3           A     Well, that's an interesting question.

4                     One could make the argument it's owned  
5     by Neuland.  And if Neuland is allowed -- then  
6     allowed to be dissolved, whatever property is  
7     owned -- evolved or devolved from its shareholders.  
8     And Neuland is, I believe, a principal of a very  
9     large real estate development firm that has offices  
10    out on Highway 88.  You see it as you go west for  
11    Oregon and in Wisconsin and in Colorado.

12                    Perhaps they have the best claim.  
13    Although, the Lost Nation Property Owners Association  
14    exercised a lot of the attributes of ownership after  
15    Neuland was no longer involved with -- after Neuland  
16    and New Landing, Inc., were no longer involved with  
17    the -- with the property.

18                    Neuland, himself -- Richard Newman  
19    himself is the principal behind Neuland Development.  
20    Richard Newman himself testified testify at the  
21    certificate case that his -- in his development, they  
22    were making no provision whatsoever to provide water

1 service to Lost Nation subdivision. That was his  
2 testimony. And the Commission had that testimony  
3 before it when it issued the certificate to New  
4 Landing Utility.

5 Q Mr. Armstrong, do you believe that New  
6 Landing Utility has -- owns those easements or has a  
7 right to use those easements in which the two-inch  
8 mains are located?

9 A I believe New Landing Utility has easement  
10 rights. I don't think we could convey free and clear  
11 title to those easements to the exclusion of whomever  
12 else might have rights to use those easements.

13 Q All right. To go to another paragraph for  
14 a moment.

15 I believe you testified that DAME Co.  
16 acquired New Landing Utility by acquiring all of its  
17 outstanding shares of stock on May 24th, 1984?

18 A It did in May and that sounds like the  
19 right date.

20 Q And that transfer of ownership was never  
21 approved by the Commission?

22 A It was not.

1           Q     Okay.  On the same date, the note -- the  
2     promissory note that was approved in consolidated  
3     case 79-0673 and 0675 was also assigned to DAME Co.?

4           A     It was.

5           Q     And that's the note you've been talking  
6     about that you'd like rates to show at some point in  
7     time the interest which has been accumulating on that  
8     obligation could get paid; is that correct?

9           A     That's the note.

10          Q     All right.  Was the transfer of that note  
11     to DAME Co. ever approved by the Commission?

12          A     No.

13          Q     You're familiar with the provision -- some  
14     of the provisions in the order in that consolidated  
15     case?  You were the attorney.

16          A     I've read the order many times.  It's a  
17     long order.

18          Q     All right.  And in Paragraph 18 of Page 16,  
19     it said that note should not be -- should not be  
20     transferrable without prior Commission approval.

21          A     Yes, I understood -- when I looked at the  
22     note not so long ago, I was struck by that provision



1 in the note itself.

2 So, yes, I'm aware of that provision.

3 So who's owed the money that wasn't  
4 paid on that note? I'm not sure. I am convinced the  
5 utility still owes it to somebody. The fact that the  
6 transfer wasn't approved didn't void the note.

7 Q The certificate order provided that the  
8 utility should install mains no smaller than six  
9 inches in diameter, generally; is that correct?

10 A It did. Although, there was an appeal and  
11 a settlement that I think that number was reduced  
12 from six to four.

13 Q Okay. And the Lost Nation area, the area  
14 served by the undersized line, that is in the  
15 utility's certificated areas; is that correct?

16 A It's one of a great many areas that are  
17 within the certificated area.

18 MR. LOWE: I don't believe I have any other  
19 questions, your Honor.

20 JUDGE BRODSKY: Okay. At this point, we will  
21 take a ten-minute recess and then we'll reconvene for  
22 any redirect.

1 (Discussion off the record.)

2 JUDGE BRODSKY: All right. Go ahead, Mr. Lowe.

3 MR. LOWE: Thank you, your Honor.

4 BY MR. LOWE:

5 Q Would it be reasonable to state,  
6 Mr. Armstrong, that the dispute with the EPA that has  
7 been dealt with in the Ogle County Circuit Court  
8 involves the three issues, the capped wells, the  
9 replacement of the undersized lines, and what to do  
10 with the water storage facility.

11 Is that basically what it's about?

12 A No. Replacement of the unassigned line is  
13 not an issue before the Court.

14 Q Not?

15 A EPA didn't bring it before the Court.

16 Q Pardon?

17 A EPA didn't bring it before the Court.

18 Q They didn't?

19 A Got a 15-count complaint. Not one count  
20 asked that the utility replace those lines.

21 MR. LOWE: Okay.

22 That was my last question.

1 JUDGE BRODSKY: Okay. Then we'll be in recess  
2 for ten minutes.

3 (Recess taken.)

4 JUDGE BRODSKY: Okay.

5 MS. FELTON: The company has a couple of  
6 questions on redirect for Mr. Armstrong.

7 JUDGE BRODSKY: Okay.

8 Go ahead.

9 REDIRECT EXAMINATION

10 BY

11 MS. FELTON:

12 Q First, Mr. Armstrong, why didn't the  
13 company get approval of the agreement to pay  
14 Ann Armstrong or Matthew Armstrong?

15 A Because neither Matthew Armstrong or  
16 Ann Armstrong are affiliated interests of New Landing  
17 Utility.

18 MS. SATTER: I'm going to object.

19 That calls for a legal conclusion --  
20 that is a legal conclusion. And unless  
21 Mr. Armstrong's testifying -- I'm sorry. Unless  
22 Mr. Armstrong's testifying as an attorney as opposed

1 to as the president of New Landing, it is not  
2 appropriate for him to give a legal opinion.

3 MS. FELTON: Given the fact that Mr. Armstrong  
4 is an attorney and he made a decision on behalf of  
5 the company not to get approval, I think his opinion  
6 is relevant to this proceeding very much so.

7 JUDGE BRODSKY: I think that Mr. Armstrong is  
8 entitled to testify as to that opinion. So the  
9 objection's overruled.

10 Go ahead and proceed.

11 BY MS. FELTON:

12 Q Mr. Armstrong, could you give your reasons  
13 why you did not file or seek approval?

14 A Well, I'm familiar with the affiliated  
15 interests statute and have been for a number of  
16 years.

17 The -- it was -- it was my view, based  
18 on my prior experience in handling affiliated  
19 interest cases before the Commission and my  
20 understanding from the plain meaning of the words  
21 used in Section 5/7 -- 5/7-101, that the mere fact  
22 that Matthew Armstrong is my son and I'm the

1 president of the utility or I'm the -- have an  
2 affiliated interest relationship with DAME Company  
3 or -- the fact that I am president of the utility  
4 does not in itself cause my son or my wife to fit any  
5 of the descriptions in the section that defines  
6 affiliated interests.

7                   So because they did not fit any of  
8 those descriptions, it was my view that New Landing  
9 Utility did not have to seek Commission approval for  
10 the arrangements it made to have my wife and my son  
11 provide necessary services to the utility.

12           Q     Mr. Armstrong, turning to Staff Cross  
13 Exhibit No. 11, what collection efforts specifically  
14 has the company made with respect to outstanding  
15 bills?

16           A     Over the years, we've made several  
17 different efforts to collect.

18                   We've sent nice letters. We've sent  
19 strong letters. We've made telephone calls and other  
20 efforts to dun our deadbeats, and we have used the  
21 services of a national debt collection organization  
22 called Transworld Systems.

1                   And we have filed lawsuits. We filed  
2   collection suits against dozens and dozens of  
3   customers. Probably more than a hundred lawsuits  
4   over the years against -- in every instance,  
5   availability to charge customers. We have a pretty  
6   good record of collecting from our metered service  
7   customers. We, of course, have the authority to cut  
8   off service to a metered customer.

9                   It's not possible -- in fact, it's  
10   impossible to cut off service to an availability  
11   charge customer.

12                  We've only had to issue one cutoff  
13   notice to a metered service customer in the time that  
14   I've been president of the utility. And it  
15   precipitated a prompt payment of the amount due.

16                  We -- we have specifically not filed  
17   foreclosure actions because it is exactly, in my  
18   view, the wrong thing for this utility to do. It is  
19   more costly than the straightforward collection  
20   action, because you have to include more defendants  
21   and you have to get them served. And sometimes you  
22   have to publish notification in newspapers in order

1 to make sure you have properly served unknown owners.

2                   You have to go through the same proof  
3 that you have to go through in a straightforward  
4 collection action, plus you have additional elements  
5 of proof that you have to meet and satisfy.

6                   And if you are successful and have a  
7 foreclosure judgment, then you -- then your problems  
8 really begin because you must first try to satisfy  
9 the claim by making arrangements with the sheriff at  
10 additional cost to sell the property at a sheriff's  
11 sale to execute on your foreclosure judgment, and you  
12 must bid the amount of your judgment at the sheriff's  
13 sale.

14                   And if no one else bids, which in many  
15 instances I believe would almost certainly be the  
16 case, you then become the owner of the property. And  
17 if the customer owes you more, if the property won't  
18 generate an amount sufficient to pay the entire  
19 amount, you might have to go to supplemental  
20 proceedings and try to collect the deficiency  
21 judgment by going to try to collect the -- find a  
22 bank account and seize that bank account, garnish

1 wages or use some of the other straightforward  
2 postjudgment collection procedures.

3                   If you don't do the foreclosure, you  
4 can go directly to these postjudgment procedures to  
5 try to enforce your judgment and go after bank  
6 accounts and investment accounts, the person's  
7 personal residency, any asset that you can find. You  
8 don't have to mess around with the expense and the  
9 burden of first foreclosing on the lot.

10                   And if you are successful and you  
11 foreclose upon the lot, now, you have the -- an  
12 unenviable position of being -- the utility being the  
13 owner of a lot that owes the utility availability  
14 charges. Do you pay yourself? In -- one way to look  
15 at it is you're kind of slowly eating your right arm.

16                   So the last thing a utility like this  
17 wants with respect to availability charge customers  
18 is to foreclose on the lot. There are a lot of  
19 customers who owe the utility money who have offered,  
20 We'll just give you the lot. The utility doesn't  
21 want the to own lots. It's counterproductive for the  
22 utility to own the lots.



1                   The notion that you were going to a  
2   foreclosure sale in a straightforward -- as opposed  
3   to a straightforward collection action is exactly the  
4   wrong thing for a utility like this to do.

5           Q     Mr. Armstrong, why didn't the company get  
6   approval of the stock transfer from AMI to DAME  
7   Company?

8           A     That would be a very lengthy answer.

9                   So I'm -- the utility explained its  
10   position on that with some detail in the response it  
11   filed to the Staff's motion to dismiss this case.  
12   Short of simply reading that into the record, I would  
13   adopt those analyses and description and argument as  
14   if I testified to it.

15          Q     Mr. Armstrong, turning to Staff's Cross  
16   Exhibits 3 and 4, can you please clarify -- or excuse  
17   me, expand upon why the company -- utility believed  
18   that no informed investor would be willing to provide  
19   the equity capital and why no informed lender would  
20   be willing to provide the debt capital?

21          A     First, I want to talk about why I believe  
22   no informed lender would be willing to provide debt

1 capital. There are probably three principal reasons:

2                   One, there is outstanding and unpaid a  
3 mortgage note that is secured by a pledge of all of  
4 the utility's property. So someone who might step in  
5 to offer new debt capital would take second space --  
6 second priority to the mortgage lien that's already  
7 of record.

8                   So any lender would first have to work  
9 through the consequence or potential consequence of  
10 this existing mortgage lien that's been filed of  
11 record for a long time and would know that the amount  
12 of that obligation has not really been repaid.

13                   So a debt -- to get new debt equity,  
14 you'd have to find someone who would be willing to  
15 take that risk. And I think that's the -- my  
16 experience with people who are willing -- banks and  
17 others that are willing to lend money to companies  
18 are very reluctant to get into situations that entail  
19 unknown and unascertainable risks like that, because  
20 it's just buying a lawsuit that they might very well  
21 lose and that they would be disadvantaged.

22                   Number two, of course, any lender, one

1 of the things that it's assessed is the likelihood  
2 that the debt will be repaid. And on the rate  
3 structure the utility presently has, it would be  
4 problematic. And the letters that came from the  
5 First Bank of Oak Park and Community Bank of  
6 Oak Park, the bank laid that out.

7 Under its present rates and for the  
8 utility to borrow money is a problem because there's  
9 -- would naturally be a concern about whether it  
10 would have the money to repay the debt.

11 So I think that -- and I also think  
12 that the -- a sophisticated investor who would study  
13 the prior orders of the Commission with respect to  
14 New Landing Utility would be wary if it fully  
15 understood the terms and consequences of some of the  
16 decisions that the utility -- Commission's made with  
17 respect to the New Landing Utility.

18 So I think that an informed lender  
19 would be most reluctant to try to extend a loan to  
20 New Landing Utility.

21 Now, as I said before, if the utility  
22 had a different rate structure or if the loan were

1     guaranteed by someone the bank had confidence in,  
2     then debt capital would be more readily available to  
3     the utility.

4                     And I believe it is more readily  
5     available to the utility if there are guarantees and  
6     even more so if the utility gets rate structured that  
7     the bank would consider appropriate for purposes of  
8     repaying the debt.

9                     On the equity side, there are a couple  
10    of reasons why I think that the utility would have a  
11    hard time raising equity capital. One of them is a  
12    long history of having rates that are -- appear to  
13    be -- in my view, are insufficient and to recognize  
14    that even way back in 1980, the Commission seemed to  
15    view availability charge companies as a different  
16    breed of cat in terms of their overall rate of  
17    return.

18                    And, again, anybody who understood  
19    that history and understood the history of  
20    availability charge companies in the state, I think,  
21    would view a company like New Landing differently  
22    from the company like Commonwealth Edison or even a

1 smaller electricity company or smaller gas company.

2                   It's just a hard sell to think that  
3 people are going to provide more equity capital  
4 especially if it must be preceded by applications to  
5 the Commission in an effort to try to convince the  
6 Commission that it should allow this utility to issue  
7 more stock.

8                   And this is particularly complicated  
9 in this case because one can read the order entered  
10 in the consolidated case as standing for the  
11 proposition that until contributions in aid of  
12 construction for this utility reach a certain level,  
13 which is considerably higher than where they were  
14 when that order entered, the Commission basically  
15 admonished New Landing and AMI, Don't come back to  
16 this Commission seeking permission to issue more debt  
17 or more equity for facilities installed until  
18 contributions reach this new level. So this would  
19 apply both to the debt capital and to the equity  
20 side.

21                   It may be -- may prove most difficult  
22 to get the Commission to authorize additional debt or

1 additional equity in light of the fact that the order  
2 in the consolidated cases can and I think should be  
3 read as saying until you get your contributions up,  
4 don't come back to this Commission asking for  
5 permission to issue more debt, more equity.

6 Q Mr. Armstrong, turning to AG Cross  
7 Exhibit 12, would you like to offer any testimony  
8 with respect to the Court order that was entered in  
9 Ogle County on March 29th --

10 A Sure.

11 Q -- that was filed?

12 A Sure I was there.

13 And it was -- I was allowed to make  
14 the argument on behalf of the utility with respect to  
15 the petition for appointment of the receiver. And  
16 the Court brought -- refused to appoint a receiver in  
17 my argument.

18 I challenged the contention that the  
19 utility was spending a lot of money by making  
20 payments to people who were, to me or to anybody who  
21 might be associated with me -- and I volunteered on  
22 behalf of the utility to make monthly reports to the

1 Commission or to the EPA or to anyone else who the  
2 Court might think would be appropriate, to report on  
3 what the utility receives and what checks the utility  
4 writes on a monthly basis.

5 And the Court took that suggestion and  
6 did order me to make a report to Mr. Cohen, who's the  
7 attorney for the EPA in the case. And I'm making --  
8 I've been making a report to him every month.

9 And the Court also, I think out of  
10 concern that improvements -- that there be money to  
11 pay for improvements and also that there be money to  
12 pay any ultimate fines that the Court may impose  
13 directly to the utility to satisfy 25 percent of its  
14 gross receipts in a separate account, money from that  
15 separate account may not be spent without the  
16 approval of the Court.

17 But that's the only restriction the  
18 Court has imposed on the receipt and expenditure of  
19 money by the utility. We do not need Commission  
20 approval to write checks with one exception. We  
21 can't write checks to any lawyers without the Court's  
22 approval, and that's been -- that order's been in

1 effect for -- since earlier this year.

2 We're not under Court supervision.

3 The Court had before it essentially the same  
4 information that's included in the application staff  
5 has filed in this case, and the obligation to make  
6 the report, which we will -- we will keep up with our  
7 reports. And I'm sure Mr. Keen takes issue with some  
8 check issue that the utility has issued. He'll make  
9 his view known to the Court.

10 Q Turn to AG Cross Exhibit 5, Mr. Armstrong.  
11 These were -- are some checks of legal services paid  
12 over the course of time from 2002 to 2004 that are  
13 paid for purposes of legal services that were  
14 rendered to the utility?

15 A Yes.

16 Q Do these particular fees pay for all the  
17 legal services that were paid or rendered to the  
18 utility?

19 A No, this is -- this is a check -- the  
20 earliest is dated October 30th, 2000, and the most  
21 recent is dated October 24th, 2004.

22 During that 24-month period, the



1 utility -- the law firm providing services to the  
2 utility with respect to this rate case and with  
3 respect to the enforcement action now in Ogle County  
4 where we went through intensive discovery,  
5 depositions of many witnesses, the better part of  
6 two-weeks on trial followed by very lengthy written  
7 arguments and, subsequently, some fairly legal  
8 service intensive postjudgment proceedings, this is a  
9 fraction of the amount that the law firm -- that  
10 represents the services the law firm has provided to  
11 New Landing Utility during this time period. A  
12 fraction and a small fraction.

13 Q Thank you.

14 Finally, Mr. Armstrong, are all the  
15 customers in Lost Nation served by the service --  
16 serviced by the old lines?

17 A No. My exhibit SMR served by -- subject to  
18 SMR, subject to main replacement charge. Exhibit SMR  
19 Identifies 88 customers that we believe would be --  
20 are presently served by the old small lines in the  
21 east half of Lost Nation.

22 Virtually all of the customers in

1     Lost Nation in the north half are served by  
2     New Landing Utility water mains that were installed  
3     pursuant to the Commerce Commission Uniform Main  
4     Extension Rule. And they are served by lines that  
5     were engineered by the utility's engineers and  
6     installed by contractors approved by the utility.  
7     And those lines on installed pursuant to Main  
8     Extension Rule, the monies for those lines were  
9     fronted by the people who were requesting this  
10    service.

11                   And there are three or four  
12    significant lines, distribution mains that were  
13    installed in the north half of Lost Nation.

14                   And then, in addition -- well, the  
15    other lines that were installed pursuant to the Main  
16    Extension Rule extend not into Lost Nation, but into  
17    Knollwood and Flag Estates and Lakewood and Reed and  
18    Long -- and the long flat road.

19                   So we've had a number of water main  
20    extensions within the service territory that have  
21    been installed pursuant to the Uniform Main Extension  
22    Rule.

1                   The old lines in Lost Nation were  
2   attached to a distribution main that was not -- the  
3   only distribution main that is an extension by New  
4   Land -- for New Landing Utility water that was not  
5   installed pursuant to Uniform Main Extension Rule is  
6   the main that extends down Woodland Drive from about  
7   Cottonwood to where Woodland drive intersects with  
8   Old Court.

9                   That main was initially -- money for  
10   that main was initially provided by Lost Nation  
11   property owner's association. And the utility was  
12   subsequently required to reimburse them. And this  
13   came about because, rather than use the Uniform Main  
14   Extension Rule to seek an extension of service out  
15   into this area, the property owner's association went  
16   to the Circuit Court of Ogle County, and through  
17   Mr. Lowe's efforts and his partner's efforts  
18   persuaded the Court in Ogle County to -- in spite of  
19   the Main Extension Rule, they should require the  
20   utility to allow the property owner's association to  
21   install this line and ultimately require the utility  
22   to reimburse them, which is different from what the

1 Uniform Main Extension Rule would have provided or  
2 did provide at that time.

3 MS. SATTER: Your Honor, is there a question  
4 pending?

5 THE WITNESS: I'm done.

6 MS. SATTER: Okay.

7 THE WITNESS: The sorry.

8 MS. SATTER: I couldn't tell what the answer  
9 was to, anymore.

10 MS. FELTON: I think we're done on redirect.

11 JUDGE BRODSKY: Okay. So nothing further?

12 MS. FELTON: Nothing further.

13 JUDGE BRODSKY: Okay.

14 Is there any recross?

15 MS. SATTER: Nope. No, thank you.

16 MS. VON QUALEN: I have a question.

17 RECROSS-EXAMINATION

18 BY

19 MS. VON QUALEN:

20 Q Mr. Armstrong, when Ms. Felton asked you  
21 about AG Cross Exhibit 5 -- when you were asked about  
22 AG Cross Exhibit 5 --

1           A     Yes.

2           Q     -- you stated that the checks attached to  
3     that represent only a fraction of the services that  
4     the law firm provided to New Landing Utility, if I  
5     understood you correctly?

6           A     The law firm -- during this time frame, the  
7     law firm --

8           Q     If I could just ask my question, it might  
9     be shorter.

10                     My question is, does that mean that  
11     there is currently at Armstrong and Associates a much  
12     larger bill that New Landing Utility will have to be  
13     paying for the law service or for the legal services  
14     during that time period?

15           A     There is a much larger bill, and we hope  
16     that the law firm will be paid for the services it  
17     provided. The services are definitely needed.

18           Q     Could you give us any idea of how large  
19     that bill is?

20           A     Well, I think that the staff adjustment to  
21     the utility's exhibit was something in the range of  
22     \$160,000.

1                   And the -- the firm has not been paid  
2   anything other than what is shown in these copies of  
3   these checks.

4                   The amount -- they do continue to  
5   provide legal service, and the amount would be in  
6   excess of \$160,000 in light of the additional work  
7   required in Ogle County and in connection with this  
8   case and other more minor matters that relate to the  
9   legal services that the utility needs.

10           Q     When you say "in excess," do you mean  
11   something like between 160 and 200,000 or are we  
12   talking about multiples of \$160,000?

13           A     No, I would say -- I would not be surprised  
14   if the amounts due to the law firm approach \$200,000.

15                   Beyond that, I'd have to look closely  
16   at some records to come up with a different number  
17   and the -- a lot of my time in the last -- in the  
18   last --

19           Q     Mr. Armstrong --

20           A     -- last three months of last year was --

21           Q     Is your answer then it's in the range of  
22   around 200,000?

1           A     I would not find that -- I would expect  
2     that. I would expect that. Maybe not quite that.  
3     Could be a little over. But it's certainly by now  
4     more than 160.

5           MS. VON QUALEN: Thank you.

6                     That's all the questions I have.

7           JUDGE BRODSKY: Okay. That was nothing from  
8     either intervenor?

9           MS. SATTER: Nothing from --

10          MR. LOWE: Nothing, your Honor.

11          JUDGE BRODSKY: Okay. All right. Thank you,  
12     Mr. Armstrong.

13                     All right. At this point, we'll take  
14     five minutes and then proceed with Mr. Rubin.

15                     (Recess taken.)

16          JUDGE BRODSKY: Okay. Go ahead.

17          MS. SATTER: The People of the State of  
18     Illinois would like to call Scott J. Rubin.

19                     (Whereupon, AG  
20                     Exhibit No. 4 was  
21                     marked for identification  
22                     as of this date.)

1                   SCOTT J. RUBIN,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:  
4                   DIRECT EXAMINATION  
5                   BY  
6                   MS. SATTER:  
7           Q    Mr. Rubin, can you please state your name.  
8           A    Scott J. Rubin, R-u-b-i-n.  
9           JUDGE BRODSKY:   Okay.   Hold on.  
10                         (Witness sworn.)  
11   BY MS. SATTER:  
12           Q    Now, I'd like to ask you whether you  
13   prepared a document entitled Direct Testimony of  
14   Scott J. Rubin, AG Exhibit 4, consisting of question  
15   and answers and Appendix A and Schedules SJR 1  
16   through SJR 8?  
17           A    Yes, I did.  
18           Q    Are there any changes you would like to  
19   make to that document?  
20           A    No.  
21           Q    If I were to ask you the questions  
22   contained in that document today, would your answers



1 be the same?

2 A Yes, they would.

3 Q Are your answers true and correct to the  
4 best of your information and knowledge?

5 A Yes.

6 Q Did you also prepare a document entitled  
7 Supplemental Direct Testimony of Scott J. Rubin, AG  
8 Exhibit 4.1?

9 A Yes, I did.

10 Q And that document contains two schedules  
11 consisting of photographs; is that correct?

12 A Yes.

13 Q Are there any changes you would like to  
14 make to that document?

15 A Yes. Just a typographical error that  
16 should be directed on Page 4, Line 5. The second  
17 word "to," t-o, should be "that."

18 So the question would read, Did it  
19 appear to you that NLU was making any progress, et  
20 cetera. That's the only correction.

21 Q If I were to ask you the questions  
22 contained in that document today, your answers be the

1 same?

2 A Yes.

3 Q And are your answers true and correct to  
4 the best of your information and knowledge?

5 A Yes, they are.

6 Q Would you like to offer AG Exhibit 4 and AG  
7 Exhibit 4.1 with the attached schedules as your  
8 written testimony in this docket?

9 A Yes.

10 MS. SATTER: I would move for the admission of  
11 AG Exhibit 4 and Exhibit 4.1, and I offer Mr. Rubin  
12 for cross-examination.

13 JUDGE BRODSKY: Is there any objection?

14 MS. FELTON: No. No objection on behalf of the  
15 company.

16 JUDGE BRODSKY: Okay.

17 Then AG Exhibits 4 and 4.1 together  
18 with their attachments are admitted.

19 (Whereupon, AG  
20 Exhibit No. 4 was  
21 admitted into evidence as  
22 of this date.)

1 JUDGE BRODSKY: And you may proceed with cross.

2 MS. FELTON: Thank you.

3 CROSS-EXAMINATION

4 BY

5 MS. FELTON:

6 Q Good afternoon, Mr. Rubin.

7 A Good afternoon, Ms. Felton.

8 Q Turning to your direct testimony. That's  
9 Exhibit 4. Just point you to Page 5.

10 You indicate in your testimony that  
11 you have been apprised of the litigation brought by  
12 the State of Illinois against the company; is that  
13 correct?

14 A Yes.

15 Q Did you have a chance to review all of the  
16 documents that were tendered and filed in that  
17 particular case or just the ones that were provided  
18 to you by the Attorney General's Office of Illinois?

19 A Well, I only reviewed what was provided by  
20 the Attorney General's office. It was quite a lot,  
21 but I doubt it was every document in the case.

22 Q Okay. Thank you.

1                   Turning to the testimony further down  
2   on the page, you indicated that there were complaints  
3   from New Landing's customers. Were those complaints  
4   related to individuals being serviced by the old  
5   lines?

6           A     I believe so, yes.

7           Q     And you also indicated on Page 6 that there  
8   was a direct impact on the quality of service  
9   rendered to the -- received by these customers.

10                   Were those the customers receiving  
11   water through the old lines?

12           A     That -- I'll say yes again, but I just want  
13   to make it clear that there appears to be some, at  
14   least, inconsistency about the number of customers  
15   involved.

16                   So I'm not sure that they're all what  
17   you might call the old line customers. I think  
18   they're all within the -- well, within the older  
19   development. But Mr. Armstrong gave a figure of 88  
20   today; but in some other documents, I think the  
21   figure was more like 100 or 106 customers that had a  
22   great deal of sediment in their lines.

1                   But, basically, I think we're talking  
2   about the same thing. There just may be a difference  
3   of 15 or 20 customers.

4           Q     But it's your understanding that they are  
5   probably the customers being serviced through the old  
6   lines?

7           A     Yes.

8           Q     Okay. Thank you.

9                   Are you aware of whether or not the  
10   Court in the enforcement proceeding that has been  
11   pending in Ogle County, Illinois, whether or not  
12   they're -- the Court found any deficiencies in the  
13   water service from the actual water source, from the  
14   well, to the customers connected through the --  
15   through the lines?

16          A     I don't believe the issue of the quality of  
17   water at the well was an issue in that case.

18          Q     So you're -- as far as your understanding,  
19   there's not been any complaints about the water being  
20   cloudy, having sediment or odor from the actual  
21   source of the well?

22          A     I don't know that that would come up, at

1     least from the customer's perspective. The customer  
2     doesn't know what's coming out of the well. They  
3     know what's coming out of the tap in their house.

4           Q     And you're not aware either, yourself?

5           A     That's correct.

6           Q     And are you aware of whether or not the  
7     record in the enforcement proceeding -- whether or  
8     not the Court ever found that the water specifically  
9     what is not suitable for household use?

10          A     I don't believe the Court was asked to make  
11     a finding on that one way or the other.

12          Q     Do you know whether or not the Court in  
13     Ogle County ever required the utility to put all of  
14     its lines through its distribution system -- all its  
15     old lines through its distribution system?

16          A     I don't understand your question.

17          Q     The old lines that are being serviced, do  
18     you know if whether or not the Court ever made a  
19     finding that the utility needs to replace those old  
20     lines and service them through --

21          A     I don't believe that was an issue before  
22     the Court either.

1           Q     Would it be your opinion that if such a  
2     finding were made by the Court in Ogle County, that  
3     it would violate the certificate that was granted by  
4     the Illinois Commerce Commission, which currently  
5     does not -- currently prohibits them from providing  
6     service through those small lines?

7           MS. SATTER:   I'm going to object on two  
8     grounds.   One, it's asking this witness to make a  
9     legal determination, which he's not being offered as  
10    a legal witness.   That's the lawyer's job.

11                   And there are some assumptions in the  
12    question that I don't think are correct,  
13    particularly, what the certificate required or did  
14    not require.

15                   So I would object to the question the  
16    way it's -- the way it was asked.

17           JUDGE BRODSKY:   Sustained as to form.

18           MS. FELTON:   Excuse me one minute.

19                   (Pause.)

20    BY MS. FELTON:

21           Q     Okay.   Mr. Rubin, turn to your supplemental  
22    testimony, Pages 3.

1                   You indicated that your observation  
2   from the site visit that you made showed the rusted,  
3   faded graffiti-covered condition of the tank; is that  
4   correct?

5           A     Yes.

6           Q     Are you aware that there has been barbed  
7   wire around the tank since the late 1970s or 1980s?

8           A     I'm aware that there's barbed wire around  
9   it. I don't think it's been effective in keeping  
10  anyone from climbing the tank, but I did notice there  
11  was barbed wire there. I don't know when it was  
12  installed.

13          Q     Would you be surprised to know that the --  
14  there's been no graffiti on the tank since the barbed  
15  wire has been installed in late 1970s or early 1980s?

16          A     That would not be consistent with what I  
17  observed. Some of the graffiti was dated. And I saw  
18  dates of 1986, and I think there were some that were  
19  more recent than that as well.

20          Q     Are you aware that the tank was installed  
21  per the plans and drawings that were approved by the  
22  Illinois Environmental Protection Agency in 1972 and



1 1973?

2 A I don't know what their requirements were  
3 at that time, but I...

4 Q Would you have any reason to believe that  
5 the company didn't follow guidelines and plans to  
6 properly erect the tank in 1972 and 1973?

7 A I have no knowledge of that one way or the  
8 other.

9 Q Turning to Page 4 of your supplemental  
10 testimony with respect to the wastewater operation.

11 Are you aware that the wastewater  
12 operation currently operates on a batch processing  
13 system that has been -- was designed to serve a much  
14 larger population, but that it only serves  
15 approximately 160 or so homes?

16 A I -- I'm sorry. I can't answer yes or no  
17 to the question because I think you mixed a couple of  
18 things up in there, but I am aware that the plant was  
19 designed to work as a batch processing plant and it's  
20 not being operated in that fashion.

21 Q And that it was designed to serve a much  
22 larger population of, say, 4,000 to 10,000 homes?

1           A     My understanding is it was designed to  
2     serve a larger population, but it's also my  
3     understanding that it was designed to handle a phased  
4     development so that the plant should function -- or  
5     should have functioned properly when it was installed  
6     for a much smaller number of customers.

7           Q     Turning to Page 5 of your supplemental  
8     testimony, you indicated that you observed rust and  
9     corrosion in the facility and specifically related to  
10    the hose; is that correct?

11          A     Well, I think you're mixing a couple of  
12    different things.

13                   I mean, a hose isn't going to rust,  
14    but other things that were metal in the building were  
15    very much rusted.

16          Q     Okay. Are you -- do you have any reason to  
17    believe that the facility, specifically, the hoses  
18    and other items in the facility were put there by a  
19    certified operator?

20          A     I don't know.

21                   I know that the facility operated for  
22    a number of years without a certified operator, and I

1     don't know when those were installed.

2                     There is a certified operator there  
3     today, but I don't know that he -- that he's the one  
4     who did all of it.

5             Q     Would you have any reason to believe that  
6     there hasn't always been a certified operator at the  
7     facility?

8             A     Yes.

9             Q     What leads you to believe that?

10            A     I didn't bring all of the documents with  
11     me.

12                    There was a period, I believe, of six  
13     or seven years when there was no certified operator  
14     from the water system. And it was a lesser period of  
15     time -- I think less than a year -- when there wasn't  
16     a certified operator in the sewer system. But, as I  
17     said, I don't have all the documents with me, so I  
18     can't point you to a specific document that shows  
19     that.

20            Q     Turning to Pages, approximately 12 through  
21     14 of your direct testimony, you indicate that it's  
22     your opinion that services provided by Ann Armstrong

1     and Matt Armstrong for bookkeeping and other related  
2     services were unnecessary; is that correct?

3             A     I don't believe I used that term.

4             Q     Well, what's your opinion of those  
5     services?

6             A     Well, my opinion is someone needs to  
7     provide those services.  Someone needs to send out  
8     bills and keep records.

9                     My concern was that it was relatives  
10    of the owner that were providing those services, that  
11    those relatives weren't specially trained.  I  
12    question the amount that was being paid for those  
13    services, but somebody needs to do it.

14            Q     So it's not your opinion that  
15    bookkeeping -- billing customers and customer  
16    care-related issues are not -- are unnecessary  
17    expenses?

18            A     No, they're very much necessary services.  
19    That's different from saying the amount this utility  
20    has been paying to relatives of the owner is a proper  
21    amount.

22            Q     And what forms your basis that they're

1       improper in any way?

2               A       20 years of experience in dealing with  
3       small utilities and knowing what they typically pay  
4       for overhead and office services and billing and so  
5       on.

6                       I mean, for a utility that's billing  
7       quarterly to be paying what, \$500 a month for billing  
8       services seems to me to be way out of line.  You're  
9       talking about \$1500 per billing cycle when you're  
10      sending out -- well, even with the availability  
11      charge, you're sending out, at most, 6 or 700 bills.

12                      So your talking about a cost of almost  
13      \$3.00 a bill.  Typically, I see costs more in the  
14      range of a dollar a bill.

15              Q       Have you actually had a chance to review  
16      the New Landing's checkbook to see what -- what items  
17      and expenses were paid and were not paid?

18              A       No.  Generally, the checkbook is  
19      irrelevant.  In the utility files, a test year that's  
20      usually based on an accrual method of accounting.  So  
21      actual cash outlays are irrelevant to setting rates.

22              Q       Wouldn't you need to know that to determine

1     what utility spends its money on day by day, month by  
2     month?

3             A     Well, that you -- you get that information  
4     from the accounting records of the utility, but not  
5     the checkbook itself.

6                     And I'd also mention that I'm not the  
7     accounting witness in this case. Mr. Effron is for  
8     the Attorney General's office.

9                     So I didn't conduct that kind of  
10    in-depth review of the revenues and expenses of the  
11    utility. That was done by a different witness.

12            Q     Mr. Rubin, what is your -- it's your  
13    opinion with respect to the legal expenses incurred  
14    by the company that those are unduly high or  
15    unnecessary. I don't want to mischaracterize your --

16            A     Yeah, that's an accurate characterization.

17            Q     Are you aware that the company on numerous  
18    occasions both prior to the actual inception of the  
19    enforcement action filed against them and after and  
20    during the duration of that, it did offer to settle  
21    on numerous occasions with the Illinois Environmental  
22    Protection Agency and the Attorney General's Office

1 and that they refused?

2 A I don't know any details of those  
3 negotiations. Yeah, I'll just leave it at that.

4 Q But if --

5 MS. SATTER: Excuse me. I'm going to object.

6 Ordinarily, settlement negotiations  
7 are not considered relevant in the context of  
8 litigation. And so I would request that there be no  
9 further questions concerning settlement negotiations  
10 that did not result in a resolution --

11 MS. FELTON: But they are --

12 MS. SATTER: -- on the basis of relevancy.

13 MS. FELTON: They are relevant only because  
14 Mr. Rubin did testify that the company should have  
15 settled and the reason why they incurred these  
16 extreme litigation costs is because they were forced  
17 to litigate and represent themselves because both the  
18 Attorney General and the EPA wouldn't consider a  
19 settlement in this matter.

20 JUDGE BRODSKY: Were you going to ask further  
21 questions on that?

22 MS. FELTON: I was going to try and explore it

1 a little bit if he had any information, since he did  
2 testify in his testimony, if I'm not mistaken, that  
3 he thought they should have settled this matter.

4 JUDGE BRODSKY: Do you have a reference to the  
5 testimony?

6 MS. FELTON: Just one minute. Excuse me.

7 At the bottom Page 25 of his direct  
8 testimony and the top of Page 26, he does make an  
9 opinion that invokes the discussion regarding the  
10 utility's legal fees and the fact that they were  
11 exorbitant.

12 JUDGE BRODSKY: Okay. So you're looking at 25,  
13 Lines 20 through 26, Line 2?

14 MS. FELTON: Yes. And then the reference to  
15 just spending money imprudently on Page 26, Line 5.

16 JUDGE BRODSKY: Okay. That -- that block of  
17 testimony that you have identified does not exactly  
18 rise to such a level that would open the door about a  
19 discussion of whether settlement was or was not the  
20 proper course of action.

21 MS. FELTON: Well, the --

22 JUDGE BRODSKY: Since the opinion doesn't -- of



1 Mr. Rubin does not extend to that, I don't think he's  
2 quite opened the door on it.

3 MS. FELTON: It does, though, your Honor, at  
4 least open the door to the -- his opinion regarding  
5 the legal fees, and at least it's worth exploring why  
6 he believes those are high or unnecessary.

7 JUDGE BRODSKY: Ask your question about it, but  
8 it will be a fairly limited right to explore.

9 BY MS. FELTON:

10 Q Mr. Rubin, on Page 25 -- excuse me, 26,  
11 Line 5, in your testimony, you indicate that, If NLU  
12 stops spending money imprudently.

13 Do you include or mean to include the  
14 costs of litigation, legal services when you  
15 reference spending money imprudently?

16 A Yes.

17 Q Mr. Rubin, are you familiar at all with an  
18 exhibit that was -- or examined an exhibit in the  
19 enforcement proceeding which contained not only a  
20 proposed consent agreement, but a letter by  
21 Mr. Armstrong to the Attorney General indicating  
22 their willingness -- the company's willingness to

1     resolve this matter?

2             A     If you show it to me, I can tell you  
3     whether I've seen it before. But, as I said, I saw a  
4     large pile of documents from that case.

5             Q     Okay.

6             MS. SATTER: I'm again going to object on the  
7     grounds that settlement negotiations in another case  
8     to which this witness was not involved or in which  
9     this witness was not involved are not relevant to  
10    this proceeding or relevant to his opinion.

11                    If Ms. Felton wants to ask the basis  
12    for his statement of imprudence, she's free to  
13    explore that. But going down the avenue of a case  
14    that he was not involved with, that he was not a  
15    witness in is beyond the realm of relevance,  
16    particularly, when they're talking about settlement  
17    negotiations which, by and large, are not relevant  
18    under the rules of evidence.

19             MS. FELTON: I would just again indicate that  
20    that information is relevant because it goes to the  
21    fact that the utility incurred costs that otherwise  
22    may not have, had this matter been resolved short of

1       litigation.

2               JUDGE BRODSKY:   I'm going to allow it.

3                       In any case, I think the question that  
4       you had asked about most immediately was that whether  
5       he recognized a particular document, which I guess is  
6       still in the process.   And in any case, that -- he  
7       can indicate whether he recognizes the document.

8               MS. FELTON:   I will move forward with -- and if  
9       we can locate that document

10       BY MS. FELTON:

11               Q       But turning back again to the reference to  
12       your characterization that the utility is spending  
13       money imprudently, would you -- did you also mean to  
14       include the bookkeeping and billing services that it  
15       rendered to both -- that were rendered both by Ann  
16       Armstrong and Matthew Armstrong?

17               A       Yes.

18               Q       But, again, you don't discount that both  
19       legal services, bookkeeping services and other  
20       billing services are a necessary expense of a  
21       utility?

22               A       As I think I said before, there's no

1 question that bookkeeping and billing services must  
2 be provided.

3 Legal services, there needs to be  
4 something for, you know, any utility, but nothing on  
5 the order of the expenses incurred by this utility.

6 And the company indicated that from  
7 2001 to 2003, it spent almost \$400,000 on legal fees  
8 and that's grossly excessive for a utility its size.

9 Q Mr. Rubin, I'm going to turn back to a  
10 couple of questions regarding the quality of the  
11 water.

12 Are you aware that there's a footnote,  
13 Footnote 7 in your testimony -- trying to locate.  
14 Footnote 7 on Page 10 of your direct testimony, you  
15 reference a Ms. Valdeniso (phonetic).

16 A Yes.

17 Q Are you aware that her testimony -- or  
18 would you have any reason to dispute that her  
19 testimony that came out in the enforcement matter  
20 indicated that the water that was coming out from the  
21 utility lines is actually great quality water?

22 A Well, her testimony's attached as part

1 of -- I believe it's, yes, Schedule SJR 3.

2 Obviously, it says whatever it says.

3 That schedule includes the entire  
4 testimony of each of the witnesses I referenced. If  
5 you want to point me to a specific part in there, we  
6 can --

7 Q Well, do you recall actually if her  
8 testimony indicated that?

9 A I'm sorry?

10 Q Did you recall whether or not her testimony  
11 was that the quality of the water was good?

12 A Off the top of my head, I don't recall one  
13 way or the other. This was prepared a few months  
14 ago, so...

15 But, as I said, if you want me to  
16 review it, it's all right here as part of Schedule  
17 SJR-3. I can take a minute and review it, if you  
18 want me to.

19 Q Did you have a chance to review her  
20 testimony or did you just --

21 A Oh, I -- everything that's in this schedule  
22 and that I referred to in my testimony I read all the

1 way through.

2 Just sitting here today, you know,  
3 three months after I prepared the testimony, I don't  
4 recall which witness said what, but it's all right  
5 here. If you want me to look at it, as I said, I'll  
6 be happy to. It will just take a couple moments.

7 Q Did you read all of the testimony or just  
8 what the Attorney General gave you?

9 Did you read the excerpts or did you  
10 actually read the entire testimony of these witnesses  
11 that you reference?

12 A I read the entire testimony of these  
13 witnesses, which is what I have attached in Schedule  
14 SJR 3, unless I missed a page or something in the  
15 copying. But I certainly read it all and my  
16 intention was to attach it all as part of the  
17 schedule.

18 Q Okay. Mr. Rubin, do you contend that the  
19 utility must replace the old lines?

20 A I'm sorry. When you say "must," I don't  
21 know what you mean by that.

22 Q In order to improve service as you

1 reference poor service or poor quality.

2 A From what I have read and heard, it seems  
3 to me that that's something that the utility should  
4 do. I don't know if that's the only thing they can  
5 do to improve service.

6 If they just installed a hydrant so  
7 they can flush the lines regularly, that may be  
8 enough of an improvement that it wouldn't necessitate  
9 tearing out all of the old lines. We won't know that  
10 until they start using the flushing hydrants.

11 My guess is that they will probably  
12 still have to replace a number of those lines in  
13 order to improve service, but that's just guessing.  
14 We don't know that yet.

15 Q So you don't know if they must replace  
16 those lines?

17 A I think I just answered that.

18 Q Okay. Fine.

19 If the utility were to replace those  
20 old lines, who is supposed to pay for that? Who's  
21 supposed to put up the money for that?

22 A The utility is supposed to put up the money

1 to install its facilities. And then assuming that  
2 those facilities are used and useful and serving the  
3 public and customers are receiving safe and adequate  
4 service, then rates are increased to provide the  
5 utility with a recovery of and on its investment.

6 Q Then why is it the utility must pay for  
7 this installation of new lines?

8 A That's -- I don't want to sound flippant,  
9 but that's the way it works.

10 It's the utility's job to install the  
11 facilities to serve the customer. And once it has  
12 done that, then it's the customer's obligation to pay  
13 what we term a just and reasonable rate for that  
14 service.

15 Customers -- you know, other than, you  
16 know, in instances of main extensions and so on,  
17 customers don't have an obligation to install  
18 facilities. That obligation is on the utility.

19 The customers certainly don't have an  
20 obligation to replace a facility that's already in  
21 place and serving them. That's -- you know, that's  
22 for the utility to do.



1                   And, you know, if you will, that's  
2     the -- once the utility provides reliable service,  
3     then customers have an obligation to pay a fair  
4     return on the utility's investment that's used to  
5     provide that service.

6                   So, yeah, as I said, I'm not trying to  
7     be flippant, but that's just the way it works.

8           Q     Mr. Rubin, are you familiar with the main  
9     extension line rule in the Public Utilities Act of  
10    Illinois?

11          A     I have read it. It's been several months,  
12    so I doubt I can go into any kind of detail with you  
13    unless you want to put a copy in front of me.

14          Q     So are you -- if you -- if I were to ask  
15    you how the main extension line rule works in  
16    Illinois, would you be able to answer?

17          A     Not without having it in front of me, no.

18          Q     So if I were to tell you that to actually  
19    extend the benefit to -- benefit of providing new  
20    lines to customers and not others would be bestowing  
21    a benefit on one group of customers and not others in  
22    violation of the main extension line rule; would you

1     have any reason to disagree with that statement?

2             A     Yes, I would have reason to disagree with  
3     that because here, we're not talking about a main  
4     extension.  You're not talking about extending  
5     service to new customers.  You're talking about  
6     replacing the facility that serves existing customers  
7     and that, to my understanding is not subject to the  
8     Main Extension Rule.  The Main Extension Rule is  
9     irrelevant to that.

10                   I mean, this is, you know, repair,  
11     replacement maintenance of existing facilities.  That  
12     has nothing to do with main extension.

13             Q     Are you aware, Mr. Rubin, that there's no  
14     specific document of conveyance that transfers these  
15     old lines to the New Landing Utility?

16             A     Well, I heard some of Mr. Armstrong's  
17     testimony -- or I should say I heard his testimony to  
18     that effect earlier this afternoon.

19                   If that -- I was not aware of that.  
20     Though, I had seen sort of summary statements of  
21     Mr. Armstrong's position on that before.  But if  
22     that's the case, then I believe the company is in

1 violation of its certificate of public convenience  
2 which required it to obtain the property rights that  
3 it needed to provide service. And, of course, that  
4 was issued over 30 years ago.

5 Q And that requirement was pursuant to the  
6 Main Extension Rule?

7 A No. That -- as I read the certificate, it  
8 requires the utility to obtain the necessary property  
9 rights. And, you know, as part of that, the  
10 Commission said, And you can't use the power of  
11 eminent domain. We're not giving you that right.

12 I don't think that has anything to do  
13 with the Main Extension Rule.

14 Q But the certificate also states, Mr. Rubin,  
15 that you can't attach small lines such as these old  
16 lines.

17 A Well, I think the term in the  
18 certificate -- and we can look at it, if you want.  
19 That's a schedule to my testimony also. But I think  
20 the term used was, Install small lines. And, of  
21 course, those lines were already in existence. So  
22 they weren't installed in violation of the

1 certificate.

2 But if the company failed to obtain  
3 the property rights to those lines, in my opinion,  
4 that would be in violation of the certificate.

5 JUDGE BRODSKY: We've reached a convenient  
6 point to pause?

7 MS. FELTON: Just one moment. We might be  
8 done, but I need to...

9 (Pause.)

10 MS. FELTON: I think the company has no further  
11 questions actually for Mr. Rubin.

12 JUDGE BRODSKY: Okay.

13 MS. FELTON: Thank you.

14 JUDGE BRODSKY: What do the parties have by way  
15 of cross, any?

16 MS. VON QUALEN: Staff has no cross of  
17 Mr. Rubin.

18 JUDGE BRODSKY: Okay.

19 And Mr. Lowe?

20 MR. LOWE: No.

21 JUDGE BRODSKY: Is there going to be redirect?

22 MS. SATTER: No.

1 JUDGE BRODSKY: Well, thank you very much,  
2 Mr. Rubin.

3 MR. SCOTT RUBIN: Thank you.

4 JUDGE BRODSKY: And for the rest of us, we will  
5 reconvene at 9:30 tomorrow morning.

6 Thank you.

7 (Whereupon, said proceedings  
8 were continued to April 5,  
9 2005 at 9:30 a.m.

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